

Vol. II

131

TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1906

No. 249

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BEECH-NUT PACKING COMPANY, PETITIONER,

vs.

P. LOBILLARD COMPANY.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE THIRD CIRCUIT

---

PETITION FOR CERTIORARI FILED DECEMBER 8, 1906

CERTIORARI GRANTED JANUARY 11, 1907

(31,557)





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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 249

BEECH-NUT PACKING COMPANY, PETITIONER,

*vs.*

P. LORILLARD COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE THIRD CIRCUIT

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IN THE  
**United States District Court**

DISTRICT OF NEW JERSEY.

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**BEECH-NUT PACKING COMPANY,**

Plaintiff,

vs.

**P. LORILLARD COMPANY,**

Defendant.

} **In Equity**  
} **No. 3056.**

2

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**Stipulation re Answer.**

It is hereby stipulated by and between the parties to the above entitled cause, through Counsel, that the defendant shall have to and including August 15th, 1921, to answer or otherwise plead to the Bill of Complaint filed herein.

3

OFFFIELD, POOLE & HINTON,  
Counsel for Plaintiff.

R. B. CAVANAGH,  
Counsel for Defendant.

Dated: New York City, June 24th, 1921.

IN THE DISTRICT COURT OF THE UNITED STATES, DISTRICT  
OF NEW JERSEY.

Beech-Nut Packing Company }  
                                  *vs.* } In Equity No. 3056.  
P. Lorillard Company. }

**Answer.**

(Filed August 13, 1921.)

The answer of P. Lorillard Company, Defendant, to the Bill of Complaint of Beech-Nut Packing Company, Plaintiff.

1. This defendant admits the incorporation of the parties hereto as alleged in Paragraph 1 of the bill of complaint.

2. This defendant does not know and is not informed save by said bill of complaint whether or not, as alleged in Paragraph 2 of said bill of complaint, the plaintiff's alleged predecessor, Imperial Packing Company, inaugurated its business prior to 1892, or thereabouts, and adopted and used the alleged trade mark "BEECH-NUT" and a trade mark or distinctive badge, comprising the collocation of the alleged trade mark "BEECH-NUT" with other distinctive and conspicuous features; described in said Paragraph 2 of the bill of complaint, and alleged to be presented by the specimen labels attached to said bill as Exhibit No. 1, and leaves plaintiff to strict proof thereof.

3. This defendant, while admitting that the word "BEECH-NUT" was adopted as part of the corporate name of the plaintiff, in the year of 1899 or thereabouts, and while further admitting, on information and belief, that the said plaintiff is a successor in business of the Imperial Packing Company, a New York corporation, denies each and every other allegation contained in Paragraph 3 of



the bill of complaint, and particularly that the trade and public have recognized and accepted the label, Exhibit No. 1, as not only the trade mark by which the desired manufacturer of this or that goods may be identified, but **also and more particularly as the distinctive autograph or personal signature of the plaintiff.** 7

4. This defendant admits, on information and belief, the allegations contained in Paragraph 4 of the bill of complaint as to the plaintiff being the successor in business of the Imperial Packing Company.

5. This defendant is not informed, and does not know, save by said bill of complaint, whether or not, as alleged in Paragraph 5 of said bill of complaint, that the Imperial Packing Company, shortly after 1891 began a rapid extension of the items of its manufacture; that the plaintiff from the time of its acquisition of its business has persistently and rapidly continued the alleged extension; that the business of the plaintiff has increased with great rapidity; that plaintiff's alleged trade mark, trade name and distinctive badge and autograph were familiar to and highly regarded by the public and on sale largely, in stores dealing in packaged consumable products such as general stores, grocery stores, drug stores, tobacco stores, news stands and the like; that plaintiff's business aggregated many million dollars every year, and comprehended a very large number of packaged products of widely varying character, including those enumerated in Paragraph 5 of the bill of complaint; that plaintiff has since added many new products to its line, and has always expected and now expects and intends, in the rapid expansion of its business, to continue so to do, all without reference to specific similarity or differences between various items alleged to be included in plaintiff's line, and leaves plaintiff to strict proof thereof. This defendant further denies that plaintiff's goods and those of its predecessor have always been identified by the alleged 8 9

- 10 trade mark, trade name, badge and autograph shown by Exhibit No. 1 of the bill of complaint.

6. This defendant does not know and is not informed save by Paragraph 6 of the bill of complaint, whether or not plaintiff's business has for many years heretofore been in a large measure dependent upon the standing in the mind of the public of the alleged trade mark "BEECH-NUT" and the alleged trade name, badge and autograph shown by Exhibit No. 1 of the bill of complaint; or whether or not the plaintiff has expended more than two millions of dollars in advertising, or whether or not said advertising has been of the character set forth in said

- 11 Paragraph 6 of the bill of complaint, or whether or not such advertising has always featured the alleged trade mark or trade name "BEECH-NUT" and the alleged badge or autograph shown by Exhibit No. 1, and leaves plaintiff to strict proof thereof; and further answering said Paragraph 6 of the bill of complaint, this defendant denies that the alleged mark or symbol, illustrated by Exhibit No. 1, aforesaid, except for variations in size, name of particular product and other immaterial variations, has been displayed conspicuously by plaintiff without exception upon all of the widely varying kind of packaged consumable goods plaintiff has from time to time put upon
- 12 the market; and further denies that such goods of the plaintiff, as are alleged to be marked with the symbol or mark illustrated by the said Exhibit No. 1 have any particular high standard of excellence, or any standard defined or indicated by said symbol or mark.

7. This defendant denies each and every allegation contained in Paragraph 7 of the bill of complaint, and particularly that plaintiff's alleged trade mark or symbol (Exhibit 1) enjoys any particular high regard with the trade and public of the United States, or that plaintiff's products so marked enjoy any particular regard or superior standing with the public, in comparison with the goods or products of others engaged in handling or

marketing the same line of commodities as this plaintiff. 13

8. This defendant admits the registration in the United States Patent Office, by the plaintiff, of the alleged trade mark No. 89,613, registered December 31, 1912, but denies that said trade mark was registered in due form of law, and denies each and every other allegation contained in Paragraph 8 of the said bill of complaint.

9. This defendant, in answer to Paragraph 9 of the bill of complaint denies that it has, within the District of New Jersey, or anywhere else, infringed upon plaintiff's alleged trade mark, appropriated plaintiff's alleged trade name or forged plaintiff's alleged autograph; or been guilty of unfair competition in trade against the plaintiff, in connection with this or any other matter; and the defendant denies that it has infringed, at any time in the past, or is now infringing or intends in the future, within the District of New Jersey, or anywhere else, to infringe upon any rights of the plaintiff, trade mark or otherwise, or to compete unfairly in business with said plaintiff. And defendant further denies that it has ever contrived to injure, or intends to injure the plaintiff or has contrived to cramp, or intends to cramp the legitimate expansion of plaintiff's business, or has contrived to divert or intends to divert from the plaintiff any profits, gains and advantages which should legitimately accrue to the plaintiff, or that it has damaged or intends to damage plaintiff in any manner whatsoever, and therefore this defendant specifically and particularly denies each and every allegation of Paragraph 9 of the bill of complaint. 14 15

10. This defendant, answering Paragraph 10 of the bill of complaint, admits that it has made and sold and is selling within the District of New Jersey and elsewhere throughout the United States a product known as "BEECH-NUT SCRAP TOBACCO", as it had and has the good and perfect right to do; but this defendant denies that its

- 16 "BEECH-NUT SCRAP TOBACCO" is a cheap or inferior tobacco, but on the contrary avers and maintains that its product is and was of a superior nature and in great demand by the tobacco-using public, and that its superiority and reputation is and was such that the sale of this brand of tobacco of the defendant has amounted and amounts to many millions of pounds per annum with a valuation running into millions of dollars, and defendant further maintains, upon information and belief, that particularly within recent years its business in dollars and cents in this brand of "BEECH-NUT SCRAP TOBACCO" has exceeded and now exceeds by millions of dollars, the total
- 17 business of the plaintiff, Beech-Nut Packing Company. and defendant further answering said Paragraph 10 of the bill of complaint admits that it uses and has used upon its "BEECH-NUT SCRAP TOBACCO" a label, a specimen of which is affixed to the bill of complaint as Exhibit No. 2, but denies that said label in any manner simulates or imitates the label Exhibit No. 1 of the plaintiff, or any other label of plaintiff, or that confusion has been or will be created in the trade and the public; or that the trade and public have generally believed that defendant's BEECH-NUT SCRAP TOBACCO is an extension of plaintiff's line and a product made by the plaintiff. And defendant
- 18 further answering said Paragraph 10 of the bill of complaint denies that in putting up and selling or marketing its BEECH-NUT SCRAP TOBACCO under the label or dress shown by Exhibit No. 2 of the bill of complaint, it has been or is guilty of trade mark infringement or of unfair competition in trade against the plaintiff, or has promoted or caused or is promoting or causing confusion in the trade, or has realized or is realizing any illegitimate profits to the loss, damage and injury of the plaintiff; and defendant denies that in its sales effort with respect to its BEECH-NUT SCRAP TOBACCO it has infringed upon or is infringing any trade mark rights of the plaintiff, or indulged or is indulging in unfair competition

against the plaintiff, either within the District of New Jersey, or anywhere else. 19

10a. On the contrary defendant avers and maintains that ever since the winter of 1896-1897, or prior thereto, the word "BEECH-NUT" has been used as a trade mark for Tobacco Products, and particularly scrap tobacco usable for both smoking and chewing, exclusively by this defendant and its predecessors in business, to wit: the Harry Weissinger Tobacco Company; the Continental Tobacco Company and the Luhrman & Wilbern Tobacco Company, and that defendant's title to said trade mark "BEECH-NUT" for tobacco was derived through due and proper assignments, from said predecessors, as from said assignments here in Court ready to be produced will more fully and at large appear; that said trade mark "BEECH-NUT" for said tobacco products has never been abandoned, either by applicant or its predecessors, or any of them, that defendant's exclusive right to and ownership of the trade mark "BEECH-NUT" for tobacco is and has been recognized by the trade, and by the public in general; that defendant's business since its inception and establishment, about the year of 1760 is and always has been directed to the manufacture and sale of tobacco products; and that defendant is not, and never has been engaged in selling goods, commodities or products of the same class as those which have heretofore been put up and sold in the open market by plaintiff; and that the containers in which defendant's Beech-Nut Scrap Tobacco is and has been packaged and sold bear and have borne the word "Lorillard's" or some similar expression, prominently printed or displayed thereon, thereby indicating to the trade and public the true origin and source of such tobacco product. And defendant further avers and maintains that its success in the sale of its tobacco products under defendant's trade mark "BEECH-NUT" for such tobacco products is and has been in no way, shape, form or manner due to any alleged rights or rep- 20 21



22 utation of the plaintiff, or plaintiff's products, or to any efforts which have been made by the plaintiff in the marketing of its products, but is and has been due to defendant's high reputation with the trade and the tobacco-using public, the superiority of defendant's products, and the scope and strength of defendant's manufacturing and selling organization and the efforts exerted in their respective field by the various departments of defendant's organization.

11. Defendant denies each and every allegation contained in Paragraph 11 of the bill of complaint, and particularly that the plaintiff has been or will be damaged  
23 by any act or acts of this defendant in or arising out of the manufacture and marketing of its, defendant's tobacco products, under defendant's trade mark "BEECH-NUT" for such tobacco products.

12. This defendant, answering paragraph 12 of the bill of complaint admits that it is now advertising, and has heretofore advertised its Beech-Nut tobacco products or brands, just as it advertises its numerous other brands, but denies that this advertising has been and is likely to be generally or in any degree whatsoever attributed to plaintiff; or that defendant's advertising forces upon the attention of the public what purports to be the fact that  
24 plaintiff is manufacturing cheap chewing tobacco, or any tobacco; or that defendant's advertising is or ever has been likely to counteract and destroy the good will and reputation of the plaintiff; and defendant therefore denies each and every allegation in said Paragraph 12 of the bill of complaint.

13. Defendant denies each and every allegation of Paragraph 13 of the bill of complaint, and particularly that it intends or threatens to place upon the market cigarettes under the trade mark "BEECH-NUT" and packaged in containers such as shown in Exhibit No. 3, of the bill of complaint, although defendant avers and maintains that it has the good and perfect right to place upon

the market cigarettes packaged in containers like said Exhibit No. 3 should it see fit to do so; and further denies that said container shown by said Exhibit No. 3 is or contains a simulation or imitation of any package, label, or other alleged property of this plaintiff, and denies that any acts of this defendant in connection with the cigarette package shown by Exhibit No. 3 of the bill of complaint would constitute threatened trade mark infringement or threatened unfair competition in trade toward the plaintiff. 25

14. This defendant denies each and every allegation of Paragraph 14 of the bill of complaint, and particularly that plaintiff has any exclusive right to the word "Quality" as associated with packaged commodities or products, and especially with tobacco products, or to the words or term "BEECH-NUT QUALITY," and denies that the public recognizes or has ever recognized any such alleged right or rights of the plaintiff, or such alleged right or rights in connection with plaintiff's goods. 26

15. Defendant denies each and every allegation contained in Paragraph 15 of the bill of complaint, so far as relate to any alleged effort on the part of this defendant to convert to its own uses the alleged good will and reputation of the plaintiff, and so far as concerns any effort to promote the belief, on the part of the public, that defendant's cigarettes are merely an addition to plaintiff's line of goods which have appeared before the public, and so far as concerns defendant being guilty of threatened unfair competition in trade with the plaintiff and of illegitimately preparing to appropriate the good will of plaintiff's business to promote the sale of its, defendant's goods. Defendant further answering Paragraph 15 of the bill of complaint admits that a number of years ago, to wit: about 1916, it ordered and received a large number of cigarette wrappers, like Exhibit No. 3 27

- 28 of the bill of complaint, and that said cigarette wrappers had appearing there on the inscription "Cigarettes of BEECH-NUT Quality have never before been offered to the public", and that this fact was known to plaintiff at the time or shortly after such wrappers were received by the defendant, but defendant avers that defendant has never sold on the market, cigarettes packaged in containers like that illustrated by Exhibit No. 3 of the bill, nor does it intend to do so, but on the contrary has discarded the wrapper or container like Exhibit 3, of its own volition, and has adopted and used for its Beech-Nut cigarettes the container or wrapper illustrated by
- 29 Exhibit No. 5 of the bill of complaint. Defendant further avers and maintains that the use of a cigarette package, wrapper or container, like Exhibit No. 3 would in no way or manner invade or infringe upon any right of this plaintiff.

16. Defendant, answering Paragraph 16 of the bill of complaint, admits that it has sold and offered for sale and is now selling and offering for sale in commerce among the several States large quantities of cigarettes put up in containers or packages as exhibited in Exhibit No. 5 of the bill of complaint, and has advertised said cigarettes extensively, but denies that it has done so, or is
- 30 doing so, for the purpose of promoting confusion in the trade or of converting to its own uses any good will of the plaintiff; denies that its wrappers or packages or containers as shown by said Exhibit No. 5 are an imitation of plaintiff's alleged trade mark, trade name or so-called autograph; denies that its advertising is or ever has been of a misleading character; denies that said cigarettes have been or will be purchased by persons of the purchasing public or of ordinary intelligence, in the belief that such cigarettes were of plaintiff's manufacture; and denies that any acts and doings of the defendant in connection with its manufacture and marketing of its BEECH-NUT cigarettes constitute or ever has con-

stituted trade mark or trade name infringement or unfair competition in trade, against plaintiff, or worked, or is working any injury whatsoever to the plaintiff. 31

17. Defendant, answering Paragraph 17 of the bill of complaint, denies that packaged tobacco and cigarettes are both within legitimate fields of expansion of plaintiff's business, but on the contrary avers and maintains that defendant is the owner of, and has the exclusive right to market tobacco products, such as packaged tobacco and cigarettes under the trade mark "BEECH-NUT", and that the plaintiff has no right whatsoever to the name "BEECH-NUT" as a trade mark for tobacco products, and that any purpose and intent or effort on the part of plaintiff to expand its business and to appear upon the market with a tobacco product, under the trade mark "BEECH-NUT", is, and would constitute an infringement of defendant's rights in the premises. Defendant therefore denies each and every allegation of Paragraph 17 of said bill of complaint. 32

18. Defendant, answering Paragraph 18 of the bill of complaint, denies that by its acts and doings it has gained large profits, or any profits, due, in whole or in part to any invasion, conversion or exploitation of plaintiff's alleged good will, or to any infringement or use of any of plaintiff's alleged trade marks, trade names or autographs; and denies that defendant has been or is guilty of any unfair competition, and denies that it has made any profits which belong to the plaintiff, or that any damage whatsoever has been done to plaintiff in any manner whatsoever by reason of any act or acts of this defendant in connection with the manufacturing and marketing of its Beech-Nut tobacco products, or in any other connection or relation whatsoever. 33

19. This defendant further answering says, that this plaintiff, by reason of acquiescence, laches and estoppel in the premises is not entitled to the relief prayed for in its bill of complaint, or to any relief whatsoever

- 34 against this defendant, and in support hereof defendant says, on information and belief, that for a number of years past, to wit: since about 1897, this plaintiff has been well aware, and has had full knowledge of the fact that the defendant, and its predecessors, was and were manufacturing and selling scrap tobacco under its, the defendant's and its predecessors, trade mark "BEECH-NUT" for tobacco products, and that defendant put up tobacco products in packages bearing the label such as is exemplified by Exhibit No. 2 of the bill of complaint; that the plaintiff, has not only throughout the years, ever since 1897, by its acts, acquiesced in defendant's
- 35 rights in the premises, but has recognized and acknowledged defendant's right as to the trade mark "BEECH-NUT" for tobacco products by informing defendant of infringing acts of other parties in using the word "BEECH-NUT" for tobacco products and that such acts infringed the exclusive rights of defendant, and has suggested and requested that this defendant take such steps as might be deemed necessary or advisable to terminate such infringement by such other parties in connection with the use of the defendant's trade mark "BEECH-NUT" for tobacco products; and this defendant further says that it has, at divers times, with the full knowledge
- 36 of the plaintiff taken action which has resulted in the cessation of infringement by other parties of the defendant's trade mark "BEECH-NUT" for tobacco products. Furthermore, in connection with plaintiff's acquiescence, laches and estoppel in the premises, this defendant further says that at, or about the time defendant was contemplating putting its BEECH-NUT cigarette upon the market, and had ordered and received cigarette wrappers bearing the label such as is shown by Exhibit No. 3 with the bill of complaint, this plaintiff, obtained possession of one or more of defendant's cigarette wrappers like said Exhibit No. 3, and took exception to certain detail features of such cigarette wrapper, such as the expres-



sion "Cigarettes of BEECH-NUT Quality have never before been offered to the public", and this plaintiff, in writing, under date of August 7th, 1919, of its, plaintiff's own volition, made the following proposal or suggestion to defendant as acceptable to plaintiff, to wit: 37

"In view of the splendid success of your Beech-Nut Scrap Tobacco, would it not be worth while to simulate your Beech-Nut scrap tobacco package in a wrapping for your cigarettes; in other words, use for your cigarettes a form of label which will immediately apprise the prospective purchaser that the cigarettes are made by the same company making the popular Beech-Nut tobacco, and tie up the advantage and publicity you have already gained through the merchandising of that product." 38

That defendant, relying upon plaintiff's acquiescence in defendant's said right to "BEECH-NUT" as a trade-mark for tobacco products and upon plaintiff's laches in asserting and enforcing its now alleged rights, went to great trouble and expense and invested and expended large sums of money in and about said trade mark for tobacco products and for the purpose of advertising the same and identifying it with defendant's tobacco products and the high quality thereof, and creating an organization for the sale of the same, and that defendant upon the faith of plaintiff's said acquiescence and laches has thus built up a high reputation for the tobacco products sold under its said trade mark and created a large demand therefor, and established a valuable organization for the sale thereof, all of which it would be deprived of at great loss and injury if the prayers of the bill of complaint should be granted. 39

Defendant, therefore, says that this plaintiff by reason of the foregoing, and divers other acts in the premises is estopped, by its acquiescence in defendant's doings

- 40 and its laches in asserting or enforcing its now alleged rights, and defendant's reliance upon said acquiescence and laches, from receiving, and is not entitled to, the relief prayed for in said bill of complaint, or any relief whatsoever in the premises against this defendant.

WHEREFORE, this defendant, P. Lorillard Company, having fully answered to the bill of complaint, denies that the plaintiff is entitled to the relief or any part thereof demanded, or to any relief whatsoever, and prays to be hence dismissed with its reasonable charges in this behalf most wrongfully sustained.

- 41 AND THIS DEFENDANT AS COUNTERCLAIM AGAINST THIS PLAINTIFF SHOWS UNTO THIS HONORABLE COURT:

- 42 20. That defendant is, as hereinbefore set forth in this answer the owner of the trade mark "BEECH-NUT" for tobacco products of all kinds, including cigarettes, and that for many years prior to the acts of plaintiff hereinafter complained of, this defendant, and its predecessors in business, had, and has manufactured and marketed tobacco products under the trade mark "BEECH-NUT", in vast quantities, and of a value running into millions of dollars, and that the value of the subject matter, defendant's trade mark "BEECH-NUT", in controversy, is in excess of five thousand dollars. That the trade and the public in general, and particularly the tobacco trade, and the tobacco-using public, recognized the trade mark "BEECH-NUT" for tobacco products to be that of the defendant. That by reason of the long experience and great care of defendant in its tobacco business, and the superior quality and character of its tobacco products, and particularly its tobacco products sold under its trade mark "BEECH-NUT", such Beech-Nut tobacco products of the defendant have become widely known in the community and throughout the various States of the United States and have commanded

and still command an extensive sale throughout the various States of the United States, and have been a source of great profit to this defendant. 43

This defendant states that, notwithstanding the long and quiet use and enjoyment by the defendant and its predecessors of the said trade mark "BEECH-NUT" for tobacco products, the plaintiff, well knowing the premises, and with the preconceived intention to injure the defendant and with the purpose to defraud it, and with the purpose to deprive this defendant of the benefits and profits resulting from the great reputation acquired by its Beech-Nut tobacco products and with the intent to acquire for itself the benefits and profits of defendant's reputation, and with the intent to assist others to palm off on the public tobacco products, particularly cigarettes, under the name "BEECH-NUT", not manufactured or sold by the defendant, and in willful disregard of defendant's rights in the premises, has recently, but prior to the filing of the bill of complaint, and this answer, to wit: since about June or July, 1919, manufactured or caused to be manufactured, and has endeavored to sell, within the District of New Jersey, and elsewhere in the United States, and now threatens to sell, as defendant is informed and believes, within the District of New Jersey, and elsewhere, an inferior grade of cigarettes under the trade mark "BEECH-NUT", with the intent to deceive and defraud the public, to injure the reputation of defendant, particularly in connection with its Beech-Nut tobacco products, such as scrap tobacco and cigarettes, and to reap and receive for its, plaintiff's own benefit the profits and gains lawfully due defendant, all of which unlawful acts of the plaintiff are an infringement, and threatened infringement of defendant's rights in the premises, and particularly defendant's trade mark "BEECH-NUT" as applied to tobacco products. 44 45

21. Defendant further says, on information and belief, that in pursuance of its unlawful policy of infringement,

46 and of threatened infringement of defendant's rights in the premises, this plaintiff with full knowledge of the fact that defendant had for many years manufactured and marketed tobacco products under defendant's trade mark "BEECH-NUT", the said plaintiff, in or about June or July, 1919, manufactured and shipped, or caused to be manufactured and shipped an inferior grade of cigarettes packaged in ordinary, cheap white boxes having the word "BEECH-NUT" printed in black letters on the face thereof, and also bearing in plain black letters the name of plaintiff, and that the cigarettes so packaged were shipped into the District of New Jersey, and attempted to be sold therein; that these cigarettes pack-  
47 aged as aforesaid did not bear plaintiff's alleged label, or a substantial likeness thereof, (Exhibit No. 1, of the bill of complaint) but such cigarettes packaged as aforesaid presented such a cheap, unattractive appearance, that, if permitted to be sold would and will operate to the injury and damage of defendant's reputation, particularly with relation to its Beech-Nut tobacco products.

That in further pursuance of its unlawful policy aforesaid this plaintiff, with full knowledge of defendant's prior adoption and use of the word "BEECH-NUT" as a trade mark for tobacco products, and its exclusive right thereto, and, as defendant now states on information and  
48 belief, for the purpose of injuring and harrassing the defendant in its business of manufacturing and selling Beech-Nut tobacco products, this plaintiff filed in the United States Patent Office, on or about June 25th, 1919, an application for the registration of the trade mark "BEECH-NUT", for Cigarettes, in the Class of Tobacco Products; that said defendant, in order to preserve its rights in the premises, and to prevent the registration of said trade mark by the plaintiff, filed opposition proceedings in the United States Patent Office against plaintiff's application for registration of this trade mark for tobacco products; that thereafter plaintiff filed an an-

swer to defendant's notice of opposition in the United States Patent Office; testimony was taken by the parties, all as will appear from the record of this trade mark opposition in the United States Patent Office, entitled—P. Lorillard Company v. Beech-Nut Packing Company, No. 2805. 49

22. Defendant further says that the foregoing acts, threats and intention of the plaintiff in disregard and defiance of defendant rights in the premises have the effect to and will encourage and induce others to interfere with defendant's trade mark "BEECH-NUT" for tobacco products and to disregard defendant's rights therein, and will furthermore result in irreparable damage, injury and loss to defendant. 50

AND, forasmuch as the defendant can have no adequate relief except in this Court, it is prayed that your Honor grant to the defendant a writ of injunction, as well provisional as permanent, issuing out of and under the seal of this Honorable Court, commanding, enjoining and restraining the said plaintiff, its officers, servants, agents, attorneys and workmen, and each and every of them, from infringing upon or threatening to infringe upon, and from making or selling, or causing to be made or sold tobacco products, in violation of defendant's trade mark "BEECH-NUT" for such products. 51

P. LORILLARD COMPANY,  
by BENJAMIN L. BELT,  
Vice-President

TREACY & MILTON,  
Solicitors for Defendant,  
15 Exchange Place, Jersey City, N. J.  
LIVINGSTON GIFFORD,  
J. GRANVILLE MEYERS,  
RICHARD B. CAVANAGH,  
R. F. WHITEHEAD,  
Of Counsel.



52

State of New York, }  
County of New York. } ss.:

BENJAMIN L. BELT, being first duly sworn, deposes and says, that he is Vice-President of P. Lorillard Company, the defendant in the within entitled action; and the person who signed the foregoing answer on behalf of defendant; that he has read the foregoing answer and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes said answer to be true.

53

BENJAMIN L. BELT.

Subscribed to and sworn before me this 11th day of August, 1921.

S. E. SPENCE,  
Notary Public.

(Seal)

54

IN THE DISTRICT COURT OF THE UNITED  
STATES,

DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company,	}	In Equity No. 3056.
Plaintiff,		
vs.		
P. Lorillard Company,		
Defendant.		

**Amendment to Answer.**

And now comes P. Lorillard Company, the defendant in the above-entitled cause and amends its answer to plaintiff's Bill of Complaint by inserting the following paragraph after Paragraph 19 of the original answer, and just before defendant's Prayer beginning with the words, "WHEREFORE, this defendant, P. Lorillard Company,":

19a. Defendant further says that in the trade mark opposition proceedings in the United States Patent Office, entitled P. Lorillard Company vs. Beech-Nut Packing Company, No. 2805, and wherein the present defendant, P. Lorillard Company opposed the registration of the trade mark "BEECH-NUT" for tobacco, by the Beech-Nut Packing Company, the plaintiff herein, and which opposition proceedings are more fully referred to and set forth in Paragraph 21 of the Counterclaim of the original answer, and following the taking and filing of testimony with exhibits on the part of both parties to said Patent Office Opposition proceedings, and in due course, a final hearing was had in said Opposition proceedings before the Honorable Examiner of Trade Mark

- 58 Interferences in the United States Patent Office, upon full pleadings and proofs and presentation by complete oral arguments by Counsel for both parties, and that thereafter, to wit, on or about the 8th day of October, 1921, the said Honorable Examiner of Trade Mark Interferences rendered his decision in a lengthy written opinion, sustaining the opposition of P. Lorillard Company to the registration of the word "BEECH-NUT" as a trade mark for Tobacco Products by Beech-Nut Packing Company, and holding that inasmuch as Tobacco Products were goods of different descriptive properties from food products and chewing gum, and as P. Lorillard
- 59 Company, the present defendant, had adopted and used said trade mark "BEECH-NUT" for Tobacco Products prior to any adoption and use of said trade mark for Tobacco Products by the Beech-Nut Packing Company, the present plaintiff, the said Beech-Nut Packing Company was not entitled to said trade mark for Tobacco Products.

- 60 That thereafter, in said Patent Office Opposition proceedings, an appeal was taken by Applicant, the present plaintiff, Beech-Nut Packing Company, from this adverse decision of the Honorable Examiner of Trade Mark Interferences, to the Honorable Commissioner of Patents, and full hearing was had upon the complete appeal record, and briefs were filed, and lengthy oral argument had by Counsel for both parties, and that thereafter, in due course, to wit, on or about the 18th day of January, 1922, the Honorable Commissioner of Patents rendered his decision affirming the decision of the Honorable Examiner of Trade Mark Interferences, and holding that the Applicant, the present plaintiff, Beech-Nut Packing Company, was not entitled to the registration of the trade mark "BEECH-NUT" for Tobacco Products.

That following this decision of the Honorable Commissioner of Patents, affirming the decision of the Hon-

orable Examiner of Trade Mark Interferences, the Beech-Nut Packing Company, the Applicant and present plaintiff, failed to avail itself of its right of appeal to the Court of Appeals of the District of Columbia, and failed to so appeal, and that the adjudication of the Patent Office became final as between the parties as to the subject matter involved, and the failure on the part of the present plaintiff to appeal said Opposition proceedings as aforesaid, is, and does constitute, an acknowledgment of such final adjudication, and plaintiff is estopped in this and any other similar proceedings from claiming and from obtaining any relief whatsoever against this defendant, P. Lorillard Company, in the premises.

P. LORILLARD COMPANY,

(Signed) By BENJAMIN L. BELT,  
Vice-President.

(Signed) MEYERS & CAVANAGH,  
Solicitor for Defendant.

64

It is hereby agreed that the foregoing amendment to the answer may be filed in this suit.

(Signed) OFFIELD, BULKLEY, POOLE & SCOTT,  
By H. McCLURE JOHNSON,  
Counsel for Plaintiff.

(Signed) MEYERS & CAVANAGH,  
By RICHARD B. CAVANAGH,  
Counsel for Defendant.

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66

## UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company,	}	In Equity No. 3056.
Plaintiff,		
<i>vs.</i>		
P. Lorillard Company,		
Defendant.		

**Order apportioning times for taking depositions  
and emitting case from calendar until completion  
of depositions.**

74

On the joint motion of Sebastian Hinton, Esq., Counsel for Plaintiff, and Richard B. Cavanagh, Esq., Counsel for defendant, and upon consideration of the joint affidavit of the said Sebastian Hinton, Esq. and Richard B. Cavanagh, Esq., it is ordered as follows:

1. That the plaintiff herein have until February 15, 1922 wherein to complete the taking of prima facie depositions in its behalf, unless this time be further extended by stipulation or order of Court;

2. That the defendant herein have ninety (90) days after the completion of plaintiff's prima facie depositions, wherein to take depositions in its, defendant's behalf, unless this time be further extended by stipulation or order of Court;

75

3. That the plaintiff have twenty (20) days after the completion of the taking of defendant's depositions, for the taking of such rebuttal depositions, as it, the plaintiff, may desire, unless this time be further extended by stipulation or order of Court;

- 76 4. That this case shall not be placed upon the January, 1922 Term Calendar of this Court.

(Sgd) J. L. BODINE,  
United States District Judge,  
District of New Jersey.

Dated: December 13th, 1921.

(Endorsement on cover) "Filed Dec. 13, 1921 at 9 o'clock A. M., George T. Cranmer, Clerk."

## UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company,	}	In Equity No. 3056.
Plaintiff,		
<i>vs.</i>		
P. Lorillard Company,		
Defendant.		

**Joint affidavit of Sebastian Hinton, Esq., of Counsel for plaintiff and Richard B. Cavanagh, Esq., of Counsel for defendant.**

80

State of New York, }  
 County of New York, } *ss.*:

SEBASTIAN HINTON and RICHARD B. CAVANAGH, both being duly sworn, depose and say, that they are respectively of counsel for plaintiff and defendant in this case.

DEPONENTS both further say that the Answer in this case was filed on or about August 13, 1921;

That the case is a large and important trade mark case and is such as to necessitate the taking of numerous depositions throughout the United States.

Plaintiff beginning August 16, 1921, has taken by deposition the testimony of considerably more than one hundred (100) witnesses in various towns and cities in Massachusetts, Connecticut, Illinois, Wisconsin and Ohio. The character of the case, however, is such that in spite of the numerous depositions taken, and the diligence exercised by the plaintiff, the said plaintiff has not as yet been able to complete the taking of all *prima facie* depositions at the date of the making of this joint affidavit and deems it advisable to take other depositions at such remote places as Oklahoma, South Carolina, etc.

81



82 Upon the completion of the taking of plaintiff's prima facie depositions, defendant desires and intends to take numerous depositions in support of its case, said depositions being of witnesses residing more than one hundred (100) miles from place of trial, or in various parts of the country, and as necessary in the taking of such depositions it is expected it will consume several months, but the taking of the depositions on the part of the defendant, and the completion of defendant's prima facie depositions will be speeded to the utmost under the circumstances.

83 Affiants, counsel for both parties, appreciating the importance of the case and the enormous amount of work necessarily involved in the taking of the depositions, have, therefore, respectfully joined in the accompanying motion relative to times for taking depositions, and for omitting the case from the January, 1922 term of this Court.

SEBASTIAN HINTON,  
Counsel for Plaintiff,  
RICHARD B. CAVANAGH,  
Counsel for Defendant.

Subscribed and sworn to before me this 9th day of December, 1921.

84

AGATHA F. BRESLIN,  
Notary Public, Bronx County.  
County Clerk's No. 55,  
Certificate filed in N. Y. County,  
Clerk's No. 205,  
Term expires March 30, 1923.

(Seal)

## UNITED STATES DISTRICT COURT,

## DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company,	}	In Equity No. 2056.
Plaintiff,		
vs.		
P. Lorillard Company,		
Defendant.		

**Stipulation re depositions.**

It is hereby stipulated and agreed by and between the parties to the above-entitled cause, as follows:

(1) That the defendant herein, P. Lorillard Company, shall have to and including August 22nd, 1923, wherein to complete the taking of depositions, de bene esse, or under the Statutes, in its behalf, unless this time be further extended by stipulation or order obtained from the Court.

(2) That after the completion of the time set for the taking of defendant's depositions as above set forth, plaintiff shall have to and including September 1st, 1923, within which to notify defendant of plaintiff's purpose to take rebuttal depositions, de bene esse, or under the Statutes, that is, out of Court, and should plaintiff desire to take such rebuttal depositions it shall have a reasonable time within which to do so, to be agreed between the parties. In case plaintiff elects not to take rebuttal depositions, or in case plaintiff completes the taking of such rebuttal depositions by September 15, 1923, the cause may be

88 placed upon the September 1923 calendar of the  
Court.

OFFIELD, POOLE, HINTON & SCOTT,  
Counsel for Beech-Nut Packing Co.

RICHARD B. CAVANAGH,  
Counsel for P. Lorillard Company.

Dated: New York City, N. Y., June 15th, 1923.

IT IS SO ORDERED:

89 (Sgd.) J. L. BODINE,  
United States District Judge.

## UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company,	}	In Equity No. 3056.
Plaintiff,		
<i>vs.</i>		
P. Lorillard Company,		
Defendant.		

**Stipulation re Record.**

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It is hereby stipulated, by and between the parties hereto, that the record in the United States Patent Office Opposition proceeding, entitled P. Lorillard Company vs. Beech-Nut Packing Company,—Trade Mark Opposition No. 2805,—comprising the testimony, stipulations and exhibits of the parties, may be, and the same is hereby incorporated in the present suit, as a part of the record hereof, and shall have the same force and effect as if originally contained herein.

It is further stipulated that either party may use in this case uncertified copies of any and all official decisions rendered in said opposition proceeding, with the same force and effect as if duly certified. 93

It is further stipulated that copies of the records of the parties in said opposition proceeding, as printed for the Patent Office, may be used herein, without re-printing.

OFFIELD, POOLE, HINTON & SCOTT,  
By SEBASTIAN HINTON,  
Counsel for Beech-Nut Packing Co.

RICHARD B. CAVANAGH,  
Counsel for P. Lorillard Company.

Dated: Canajoharie, New York, February 11, 1922.

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## UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company,  
Plaintiff,*vs.*P. Lorillard Company,  
Defendant

In Equity No. 3056.

**Stipulation.**

95

**As to record of sales of plaintiff—Beech-Nut Packing Company—for the years 1903-1921, inclusive.**

It is hereby stipulated by and between the parties hereto, through their respective counsel, that the "Table of Sales Statistics" of the Beech-Nut Packing Company, the Plaintiff herein, for the years 1903 to 1921 (inclusive) and hereinbelow set forth, was furnished to the defendant by the plaintiff on April 10, 1922. Plaintiff further stipulates that this table was prepared or transcribed by Plaintiff from its regular books or records, and that the amounts or figures given in dollars and cents for each year are true and accurate.

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## TABLE OF SALES STATISTICS.

BEECH-NUT PACKING COMPANY,

1903-1921.

Furnished  
R. B. CAVANAGH,  
Counsel for P. Lorillard Co.

by

SEBASTIAN HINTON,  
Counsel, Beech-Nut Packing Co.,  
April 10th, 1922.

## STIPULATION.

33

				Comp. Tab.	97
				Misc. Conf.	
Total Sales	Reg. Line	Gum	Bev.		
1903- \$ 563,764.37	\$ 563,764.37	\$	\$		
1904- 832,906.10	832,906.10				
1905- 1,000,986.83	1,000,986.83				
1906- 1,267,877.81	1,267,877.81				
1907- 1,293,059.92	1,293,059.92				
1908- 1,408,481.33	1,408,481.33				
1909- 1,950,534.60	1,950,934.60				
1910- 2,555,315.85	2,555,315.85				
1911- 2,838,384.99	2,819,441.56	18,943.43			
1912- 3,179,337.79	2,778,822.00	400,515.79			98
1913- 4,112,592.99	2,681,110.07	1,431,482.92			
1914- 4,966,337.76	2,484,854.93	2,480,023.48	1,459.35		
1915- 5,703,945.39	2,258,356.76	3,288,521.35	157,067.28		
1916- 6,598,385.15	2,681,685.97	3,632,127.15	284,572.03		
1917- 7,363,678.56	3,407,467.30	3,594,864.53	361,346.73		
1918- 6,754,967.21	4,502,462.68	1,853,038.28	399,466.25		
1919- 8,979,586.35	5,378,607.40	2,233,860.24	1,367,118.71		
1920- 11,138,226.51	5,435,324.37	3,955,902.00	1,747,000.14		
1921- 12,109,573.68	4,618,207.28	6,281,945.41	1,209,420.99		

Plaintiff further stipulates that in said "Table of Sales Statistics" in the column bearing the caption, "Total Sales" appear true and accurate figures in dollars and cents of the total sales of all goods sold and delivered by the Beech-Nut Packing Company, yearly, from 1903 to 1921 (inclusive). The remaining three columns of the chart, bearing the captions, "Reg. Line", "Gum" and "Comp. Tab. Misc. Conf. Bev.", indicate how the total figures or amounts shown in the "Total Sales" column are divided amongst various items of Plaintiff's sales business. For example, in the year of 1921 the total sales were \$12,109,573.68, this sum or amount being made up or composed of \$4,618,207.28, sales in Regular Line;

100 \$6,281,945.41, sales in Gum; and \$1,209,420.99, sales in Compound Tablets, Miscellaneous Confectionery and Beverages, etc. It is further stipulated that the figures or sums herein given also include goods which have been returned by dealers in course of business. This item (returned goods) amounted to .0043 of the total in the year 1920 and was the highest it has ever been in that year.

Plaintiff, upon request of Defendant, explains the falling off in total business in 1918, and of the Gum business 1918-1919 as follows:

101 The reasons for the falling off in sales of Gum 1918-1919 (which caused the falling off in the total sales in 1918, shown by the figures) were as follows:

1. Plaintiff was unable to secure prime chicle in these years in sufficient quantities to meet the demand for its gum.

2. Plaintiff was restricted by the Government in the quantity of sugar it could obtain.

102 During the greater portion of 1918-1919 Plaintiff was allotting gum shipments on the basis of one-half to one-third of the amount ordered and turning away a large amount of business in gum, etc. Gum production did not meet the demand until well along in 1921.

It is further stipulated by the parties that the furnishing of this "Table of Sales Statistics" by the Plaintiff to the Defendant may be considered as a compliance with requests of Defendant's counsel for data along this line made during the examination of Christina Carswell, statistical manager of Plaintiff, and the production of said Christina Carswell and the witness Francis E. Barbour for further ex-

## STIPULATION.

35

amination as to statistics of the business of the Plaintiff is waived. 103

OFFIELD, POOLE, HINTON & SCOTT,  
Counsel for Plaintiff.

MEYERS, CAVANAGH & WHITEHEAD,  
RICHARD B. CAVANAGH,  
Counsel for Defendant.

Dated: May 27, 1922.

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## DISTRICT COURT OF THE UNITED STATES,

## DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company]

vs.

In Equity No. 3056.

P. Lorillard Company ]

107 DEPOSITIONS taken in behalf of P. Lorillard Co., defendant, pursuant to notice and by agreement of counsel, before Daniel T. O'Connell, a notary public within and for the County of Suffolk, Commonwealth of Massachusetts, acting as special examiner by consent of counsel, at the office of said Daniel T. O'Connell, Room 401, Exchange Building, 53 State Street, Boston, Massachusetts; also at Lynn, Salem and Lawrence, Massachusetts, beginning the 8th day of August, A. D., 1922, at 10 o'clock, a. m.

## Present:

SEBASTIAN HINTON, of OFFIELD, POOLE, SCOTT & HINTON,  
Counsel for the Beech-Nut Packing Company.

108 RICHARD B. CAVANAGH, of MEYERS, CAVANAGH &  
WHITEHEAD;  
Counsel for P. Lorillard Co.

FERDINAND BIERINGER, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. (By Mr. Cavanagh.) What is your name, age, residence and occupation?

A. My name is Ferdinand Bieringer.

Q. 2. Age; how old are you?

109

A. I am 40.

Q. 3. Residence?

A. Brighton, 1697 Commonwealth Avenue.

Q. 4. And Occupation?

A. Tobacconist and cigar maker,—well, cigar maker to start with, and tobacconist afterwards.

Q. 5. How long have you been in the cigar business?

A. Ever since I was in this country; that is, about 25 years.

Q. 6. Where is your present place of business located?

A. 123-125 Court Street, but I am also with Bieringer-Hanauer Company, and some other companies. That is a big concern, Bieringer-Hanauer Company. 110

Q. 7. Is this store on Court Street located in the business or residential section of the city?

A. Business section.

Q. 8. What kind of goods do you handle in that store?

A. Well, we carry a general line of everything; American Tobacco Company's goods; Lorillard tobaccos,—everything that people demand.

Q. 9. Do you sell anything else besides tobacco products?

A. Well, we sell, gum, a little gum; that is about everything in the candy line,—that is gum is about the only thing we handle. 111

Q. 10. What Lorillard brands or products do you sell?

A. We carry about the general line that sells in New England. Of course they make a good many different brands that sell elsewhere, but we sell New England demands.

Q. 11. Will you name some of the brands of P. Lorillard Company tobacco that you sell?

A. Mechanic's Delight; Planet; Neptune; Good Smoke; Union Leader; Stag; Just Suits in all forms; Sensation Tobacco.

112 Q. 12. What cigarette brands of Lorillard's do you carry?

A. We carry Moguls; Murads; Egyptian Dieties; Helmars; Turkish Trophies, and Beech-Nut cigarettes, naturally.

Q. 13. Do you also carry Beech-Nut Scrap Tobacco?

A. We do; yes; in a package like that one there (referring to a package of Beech-Nut Scrap Tobacco.)

Q. 14. What chewing gum brands do you carry?

A. Juicy Fruit; Wrigley's Spearmint, and Double Mint; and Beech-Nut,—that is about all we carry.

113 Q. 15. Who, if you know, makes the Beech-Nut cigarette and the Beech-Nut Scrap Tobacco,—that is, who is the manufacturer?

A. P. Lorillard Co.

Q. 16. And who, if you know, is the manufacturer of the Beech-Nut Chewing Gum?

A. The Beech-Nut Packing Company.

114 Q. 17. State whether or not you were ever confused or under the impression that the Beech-Nut cigarette, such as the package I show you, or the Beech-Nut Scrap tobacco, a package of which I also show you, and both of which are in this case as exhibits, were ever made by the Beech-Nut Packing Company,—were you ever confused as to who manufactured them?

A. I never was confused in my handling it. It is a different package, different altogether, entirely different. The Beech-Nut Packing Company and the name Lorillard is not confusing.

Q. 18. What manufacturer's name is on that package of cigarettes?

A. P. Lorillard Co.

Q. 19. What manufacturer's name appears on the Scrap tobacco?

A. P. Lorillard Company.

Q. 20. I show you a box of Beech-Nut Chewing Gum.

Whose name appears on that package as the manufacturer? 115

A. Well, it is Beech-Nut Packing Company.

Q. 21. Do you handle any other products of the Beech-Nut Packing Company?

A. No, that is all.

Q. 22. How long have you been buying and selling the Beech-Nut cigarettes.

A. Well, it must be, I should think about two years ago, two years or two years and a half. The cigarettes, you mean?

Q. 23. Yes.

A. Two years and a half,—since they were out. I don't know exactly the time they were first out, but I was one of the first ones to have them. 116

Q. 24. How long have you been handling this Beech-Nut Scrap tobacco?

A. Oh, I handled that for a long time, I couldn't tell you; I guess it is 5 years. I handled Beech-Nut a long time, years ago, I couldn't exactly tell you.

Q. 25. Did you ever buy any Beech-Nut cigarette or Beech-Nut Scrap tobacco believing they were made by the Beech-Nut Packing Company?

A. No.

Q. 26. Did you ever sell any Beech-Nut cigarettes or Beech-Nut Scrap tobacco as the product of the Beech-Nut Packing Company? 117

Mr. Hinton: Objected to as indefinite and as calling for a conclusion of the witness.

A. No.

Q. 27. State whether or not you ever heard of the Beech-Nut Packing Company putting out any tobacco products?

A. No.

118 Q. 28. State whether or not you ever knew or heard of the Lorillard Company putting out any chewing gum, or food products?

A. I never knew or heard of it.

Q. 29. State whether or not you ever heard any comment, or inquiries from customers or other people which would indicate that they thought the Beech-Nut Packing Company, the manufacturers of the chewing gum, were also the manufacturers of the Beech-Nut cigarette and the Beech-Nut Scrap tobacco?

119 Mr. Hinton: Objected to as calling for a mere conclusion of the witness.

A. No; they simply asked for what they wanted, and they didn't care who it is made by.

Mr. Hinton: Objected to as a mere opinion of the witness without the slightest foundation.

Q. 30. Then I understand your answer to be that you never had anybody ask about it?

A. No.

120 Q. 31. State whether or not you ever had any customer, in making a purchase, ask you for Beech-Nut cigarettes or Beech-Nut Scrap tobacco made by the Beech-Nut Packing Company?

A. No.

Q. 32. State whether or not you ever had any conversation with any representative of the Beech-Nut Packing Company in connection with the present case, and, if so, state it in your own words?

A. There was a man there about a year ago,—of course he didn't give me his name,—and he was inquiring about how the Beech-Nut cigarettes were selling, and afterwards he told me that he was interested in the Beech-Nut gum, and asked me if I thought that the Beech-

Nut gum is made by them that put out the Beech-Nut cigarette. I told him by all means no, and also I should think if the cigarette is out, it ought to help the sale of Beech-Nut gum, and that that company should pay P. Lorillard so much for using it on the cigarette. That is what I told that man, so he was not there very long, and he walked out. 121

Q. 33. How long ago was this?

A. That was about a year ago, I can't remember the exact time, but it was about a year ago.

Q. 34. Where did this talk take place?

A. 123-125 Court Street.

Q. 35. What is the reputation of the P. Lorillard Co. in the tobacco business, if you know? 122

A. Well, the best cigarette manufacturers,—they make the best cigarettes and tobacco; they are the oldest concern, and they have no other than the best cigarette and tobacco manufactured all over the country.

Q. 36. State whether or not you ever saw, bought or sold a package of Beech-Nut cigarettes which did not have the name "P. Lorillard Co." on it?

A. The package is always the same; they make it just the same as they ever did with "P. Lorillard Co." on it.

Q. 37. And it is just the same as the package with "P. Lorillard Co." on it in your hand? 123

A. Yes; and they advertise in the paper always P. Lorillard Co.

Q. 38. State whether or not you ever bought or sold or saw a package of the Lorillard Company that did not have on the package, "P. Lorillard Co."

A. It is the same upon this here now. There was never any change.

Q. 39. State whether or not you would have any difficulty in distinguishing the appearance of the packages, or wrappers, of the Beech-Nut cigarette and the Beech-Nut tobacco from Beech-Nut chewing gum box and package?

124 A. No. I can't see how anybody can make a mistake. Of course it is a different sort of package and label, a different sign. If a man comes in and asks for a package of gum, he wants gum, and he won't go out of the store until he gets the gum; and if he wants cigarettes, he won't go out until he gets the cigarettes. So I don't think there is any confusion there.

Q. 40. What would be your opinion of a customer that came into your store and wanted a package of Beech-Nut chewing gum, and took a package of cigarettes, or a package of Scrap tobacco in place of the gum?

125 A. I don't see how he could do that. If he wants gum, he wants gum. It has no relation, one with the other. I don't see how a man could make such a mistake. If I go into a store and I want a certain thing, I am going to buy just what I want. Of course there is a difference in them, one is confectionery and the other is tobacco.

Q. 41. In what manner, if you know, does the P. Lorillard Co. advertise its Beech-Nut cigarettes and Scrap tobacco, and to what extent?

A. Well, they advertise mostly in magazines and newspapers; the Beech-Nut cigarettes are advertised in newspapers mostly, and also in some magazines.

126 Q. 42. Have you seen such advertisements of P. Lorillard Co. of such products?

A. Yes; they have their name on every package that they put out.

Q. 43. Do you have any difficulty in reading the name "P. Lorillard Co." through the glazed tissue paper on the cigarettes,—the cigarette packages?

A. No. It is a thin paper put on to keep out the air; it is silk paper and you can see the name,—you can see the name P. Lorillard Co. and also on here (indicating Scrap tobacco package.)

Q. 44. Would you have any difficulty in reading the name on the package through a window glass from the street?

A. No; I could see it plainly.

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Q. 45. State whether or not you ever handled or sold any product of the Beech-Nut Packing Company, the gum manufacturers, which resembled in color and appearance this package of Lorillard cigarettes or this package of Lorillard Scrap tobacco?

A. No; the only thing I handle is the gum.

Q. 46. Can you state whether or not it is common practice in business to mark goods with the word "Quality", or similar expressions, indicating quality?

A. Yes, they sometimes put on "Quality" "Blend," etc.

Q. 47. Referring to this exhibit package of Beech-Nut cigarettes of P. Lorillard Co., where the words "Perfect Quality" appear upon the panel on one side, whose name is used in conjunction with that expression?

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A. P. Lorillard Co. They do that to tell you who it is made by, and things like that; it is a natural way of advertising and telling what is inside.

Q. 48. State whether or not you regard tobacco products, such as cigarettes or Scrap tobacco, to be of the same, or of a different class of goods from confectionery, food products and beverages?

A. There is a difference, yes.

Q. 49. Do you regard them as a different class of merchandise?

129

A. A different class of merchandise altogether. One has nothing to do with the other.

Q. 50. How long have you known of the P. Lorillard Co., the tobacco manufacturers?

A. Myself, 25 years.

Q. 51. What class of customers do you handle, and about how many a day in your store?

A. The middle class, and, well, we handle on an average about 600 or 700 customers a day.

Q. 52. And, as I understand your testimony, you never had any of these customers or any of your cus-



130 tomers make any comments or remarks which would lead you to believe that they thought the Beech-Nut cigarette or the Beech-Nut Serap tobacco, like these exhibit packages, were made by the Beech-Nut Packing Company, did you?

A. No.

Q. 53. When you had this conversation with the man who said he was from the Beech-Nut Packing Company, state whether or not he asked you if there would be any confusion, or you had any customers that were confused in regard to it?

131 A. He didn't ask me any more questions after I told him that he should pay Lorillard Company a certain sum for using their names on the cigarette, so he walked out.

Q. 54. Why did you tell him that?

132 A. Because I thought it was a good thing for them; it is a good thing for the Beech-Nut Packing Company for someone else to use the same thing on cigarettes; it advertises the brand and makes their product sell so much quicker. Of course one has nothing to do with the other. That is the way I figure it out, and of course that is my belief. Of course Lorillard Company, they could make it any brand; if they would use some name other than Beech-Nut, they would get along just the same, they would sell that brand just the same, because their tobacco is known, and they could sell it under any brand.

Mr. Cavanagh: I think that is all.

*Cross Examination.*

X-Q. 1. (By Mr. Hinton.) Mr. Bieringer, you have a store at 125 Court Street, Boston?

A. Yes.

X-Q. 2. And you are also in the Bieringer-Hanauer 133  
Co.?

A. Yes, sir.

X-Q. 3. What does Bieringer-Hanauer do?

A. They are manufacturers' agents; they are selling  
agents.

X-Q. 4. Of tobacco products.

A. Yes, sir.

X-Q. 5. Do they put any private brand on tobacco and  
cigars?

A. Private brands, no; sometimes we do, but as a rule  
they are general brands.

X-Q. 6. Do you have them manufactured by tobacco 134  
manufacturers?

A. Yes, sir.

X-Q. 7. And supplied to you with their label on them?

A. Yes, sir.

X-Q. 8. Now, you sell the Beech-Nut gum?

A. We do.

X-Q. 9. You don't sell much of that?

A. Well, we sell fair, not much, not so much as other  
gum.

X-Q. 10. Did you ever make a display in your window  
of Beech-Nut gum?

A. We did.

X-Q. 11. Did you ever make a display in your window 135  
of Beech-Nut cigarettes?

A. Yes, sir.

X-Q. 12. And Beech-Nut Scrap tobacco?

A. Yes, sir.

X-Q. 13. When was that?

A. At the beginning, when the Beech-Nut cigarette  
came out, It was my idea; I made a display in the win-  
dow, and put in everything in the brand of Beech-Nut; I  
put it in the window just to make a display, that is all;  
it was an idea of my own. If I had had more brands,  
I would have put in more; I made a regular Beech-Nut

136 display. I never believe in putting only one item in the window, I always like to put in many different items, because it brings me business. The more items you have in a window, the more business you get. This is my own idea.

X-Q. 15. Then you subsequently took the Beech-Nut gum out of the window, did you not?

A. No; I didn't take it out of the window; I left it in there.

X-Q. 16. Didn't you shortly after you put that display of Beech-Nut gum, and Beech-Nut cigarettes and Beech-Nut scrap tobacco in your window, remove the gum?

137 A. Well, sometimes we take out the tobacco; we might have taken it out, because sometimes we are short of gum and we take it out of the window, but for no other reason.

X-Q. 17. I am asking for the fact?

A. I don't remember taking any of the stuff out of the window.

X-Q. 18. Of course that was about a year ago, wasn't it?

A. Yes.

138 X-Q. 19. I wish you would study that over in your mind for a minute and see if you can't remember whether a Lorillard man came around to your place of business and asked you to take that gum out of the window?

A. He might have, I wouldn't say. He might have come in and the clerk might have taken it out.

X-Q. 20. Wait a minute. Will you try and think of it.

A. I left the cigarettes and the gum in there, I think, until I cleaned out the window again.

X-Q. 21. That is your present recollection of it?

A. Yes, sir.

X-Q. 22. Did you tell me last spring, Mr. Bieringer,—do you remember meeting me last spring?

A. Yes.

X-Q. 23. Did you tell me then that you had the gum

and the cigarettes and the scrap tobacco in the window? 139

A. Yes, sir.

X-Q. 24. And that you took the gum out; do you remember that now?

A. It might be, I am not sure.

X-Q. 25. And do you remember that you told me that the Lorillard man came around and told you that there was going to be some trouble?

A. Well, that might be; I suppose I got some letter from them, probably telling one of the clerks to take it out.

X-Q. 26. Weren't you told that while that trouble was going on you better take the gum out? 140

A. They might have, I am not sure.

X-Q. 27. Now, Mr. Bieringer, you say you put this Beech-Nut set of brands in the window together,—

A. Yes.

X-Q. 28. —in order to make a regular Beech-Nut display?

A. Yes.

X-Q. 29. And if you had had any other Beech-Nut products, for instance, the mint and hard candies, you would have put them all in there, all in one window, in one of your windows?

A. All in one of the windows.

X-Q. 30. In other words you would feature the Beech-Nut line. Beech-Nut cigarettes and Beech-Nut scrap tobacco and Beech-Nut gum, and the purpose and idea you had in mind doing that was something like this,— 141

Mr. Cavanagh: Ask him what the purpose was, and don't dictate to him.

Mr. Hinton: I am entitled to ask leading questions.

Mr. Cavanagh: But you are not entitled to dictate to the witness.

Mr. Hinton: This interference with the cross examination is strenuously objected to.

142 X-Q. 31. Will you explain to me, Mr. Bieringer, what your real idea was in putting that line of Beech-Nut stuff in the window?

A. It was just an idea of my own, to make a Beech-Nut display. I don't know anything about the insides of the concern. I just put it in on my own idea, that is all. In fact, I made that window display on my own ideas; I was not asked to do it, I just done it myself.

X-Q. 32. Yes, but why did you have all the Beech-Nut stuff in the window?

143 A. Just the idea to have a Beech-Nut display. If I had had more Beech-Nut brands, I would have put them in. The more you put in of the different kinds, the more business you get. Some people don't smoke cigarettes, some people chew tobacco, and some chew gum, and if they saw it all in the window they would come in and buy it, whatever they wanted.

X-Q. 34. Is that the idea?

A. If he wants gum he buys gum, and if he wants cigarettes he buys cigarettes.

144 X-Q. 35. Yes, I appreciate that perfectly, but if a man had established a liking for Beech-Nut gum and then he wanted cigarettes, and he saw them displayed in that way in your window, he would be apt to give the cigarettes a trial, would he not?

A. Not always. Every man may possibly like, not the cigarette, but a different cigarette, and they are not going to buy what they don't want. Not everybody buys Beech-Nut cigarettes. Lots buy other cigarettes. But a person looks in the window and perhaps he buys Beech-Nut cigarettes, and perhaps he buys some other brand.

Mr. Hinton: Objected to as evasive and argumentative.

X-Q. 36. Mr. Bieringer, now you have testified in your direct examination twice that you told a Beech-Nut

representative that the Beech-Nut Company ought to pay 145  
the Lorillard Company for putting its name on the cigarettes.

A. I really believe so, because the Beech-Nut gum is benefiting by it.

X-Q. 37. The Beech-Nut gum is benefiting by having the cigarettes on the market?

A. By having that Beech-Nut name, yes.

X-Q. 38. You have found that they are sufficiently connected together so that the advertising of one helps the advertising of the other?

A. It is my belief that so long as it is a good article, a good merchandise,—and P. Lorillard Co. only puts out 146  
good merchandise, and it is no disgrace to the Beech-Nut gum, you see, because it is a very good thing, and the more brands of different kinds of merchandise, the better. Of course I don't figure candy and gum the same, it is a different merchandise, so you see I think it helps the Beech-Nut goods; tobacco, it is different goods. Gum is gum and candy is candy, and cigarettes are cigarettes, and then goods all together help each other.

X-Q. 39. Going back to the point on which we were talking, I understand that you find that the advertising and sale of Beech-Nut cigarettes reacts on the gum, helps the gum?

A. It helps the gum; yes. 147

X-Q. 40. They are sufficiently connected together so one has an effect on the other?

A. That is, having that name in your mind all the time, "Beech-Nut" the more you see that in your mind, the more popular it gets, and it is very easy to think of it; and Lorillard makes good merchandise, as everybody knows. Lorillard stands for quality all the time,—your money back, if you want it. They always stand by their goods that they put out.

X-Q. 41. And because the cigarettes are good merchandise, as you say, it helps the gum?

148 A. Yes; if it was poor merchandise I would say different, I would say it spoils their name of Beech-Nut.

X-Q. 42. And hurts the sale of the gum?

A. It might hurt the sale, probably, but when they put out good merchandise, it helps.

X-Q. 43. Yes, I think I understand your meaning, Mr. Bieringer. Now, that was somewhat the theory that you had in mind, Mr. Bieringer, when you made this display window of Beech-Nut items, when you put the different Beech-Nut items in the window, that they helped each other?

149 A. Yes, that they helped each other. Of course anything I put in the window, it sells. I never take one item and make a display of it, because it is expensive for the store. Everybody smokes cigarettes, and if a man smokes cigarettes, of course I want him to smoke cigars, and when something is put in the window to interest everybody who goes by, they are very apt to step in and buy something.

X-Q. 44. And it is a very nice and effective thing to do, to put all those items bearing that name of "Beech-Nut" in together, as you have said?

A. Well, it was my idea exclusively, nobody elses.

150 X-Q. 45. Now, after talking with me for a few minutes about this, Mr. Bieringer, and having recollected the situation enough at least to know that it was your idea exclusively, I wish you would try to remember again whether you did not take that Beech-Nut gum out of the window because you were told by a Lorillard man that there was some trouble brewing, and until that was over you had better take the gum out of the window?

A. It might have been; it might have been one of my clerks took it out, but, as a rule I don't take out anything out of the window until we clean the window out. I think I left it in there for a week or more. But if they had asked me, I had just as soon do it. Nobody is looking for

any trouble. We are putting gum right along in the window; we are always putting gum in the window. 151

X-Q. 46. Now, Mr. Bieringer, I wish you would try to remember back, as well as you can, to last spring when this was going on that we have just been talking about, and you had this display in the window, are you sure that while that display was in the window you didn't have any comments or hear any remarks about it from your customers?

A. No, not a single word.

X-Q. 47. You don't remember any at the present time?

A. No; that is positive, not a single thing, that is sure. They don't seem to care, they don't ask any questions; if a man wants cigarettes he buys cigarettes, and if he wants gum, he don't care who it is made by, so long as it is good merchandise, and he buys it. 152

X-Q. 48. They don't come in and stand and have any talk with you about it at any time?

A. No, the customer don't care to know about it; all he knows, if it is good goods, he buys it; they never care who makes it.

Mr. Hinton: The part of the answer stating that the public does not care about who makes it is objected to as volunteered and as the mere opinion of the witness. 153

Mr. Cavanagh: In this connection it appears that Mr. Hinton is exceedingly desirous to have the witness' opinion on any subject which he thinks might be of benefit to himself.

X-Q. 49. Now, you said in your direct examination, Mr. Bieringer, that the Lorillard Company's tobacco is known, and that you are selling their tobacco. You mean you are selling it to the retail customer, or to the dealer?

A. To the people,—they can sell to the dealer or to



154 the consumer. Any amount they put out, they can sell it always successfully, any brand they put out.

X-Q. 50. Well, you think the customer does not care, then, who makes the stuff that he buys?

A. Well, they don't care so long as it is a good article. P. Lorillard Co. they always make good goods. You see that is half the battle,—that is the battle. It is the merchandise. You can't go to work and put out a brand, and if it is not good goods, it won't sell.

X-Q. 51. And it doesn't make any difference to the customer who makes it?

155 A. No; so the question is, is it going to sell? And Lorillard makes good goods all the time.

X-Q. 52. And Beech-Nut brand on the cigarettes is not a help in the sale of them, so long as Lorillard puts them out?

A. They could go to work and pick out another brand than "Beech-Nut" because it might sell better. It is the merchandise, the tobacco that is in it. It is not the name of the cigarette that is selling the goods. It is the quality that sells the goods, it is not the name.

X-Q. 53. The name does not make any difference?

156 A. No difference. If you turn out Beech-Nut cigarettes in poor quality, you can't sell your brand,—you can kill your brand over night, just one lot of poor goods, just one little lot, that spoils the whole lot, and it will take ten years to get it back again on the market.

X-Q. 54. In other words, if the name "Beech-Nut" stands for quality goods in the minds of the public, and the consumer should buy just one or two items with that name on that he didn't like it would hurt the business very much?

A. Well, the Beech-Nut, if it is very poor quality goods, it is not very good for the goods.

X-Q. 55. It would hurt the whole thing, the gum business and all the other business?

A. Yes; but Lorillard always produces the best, what-

ever they have. The name "P. Lorillard Co." means 157  
guaranteed good quality at all times or your money back,  
if you want it. If I go to work and have cigarettes  
and they are not in good condition, they are glad to take  
the goods back and give me what I want. They don't  
want to have any customer getting old stuff, so their  
goods is always of the right kind. The same thing would  
happen with gum also. When gum gets old, gets stale,  
it is no good. Beech-Nut gum, when it gets old—I never  
tried it—but when it gets old it is never any good  
either.

X-Q. 56. Well now, Mr. Bieringer, just one more ques- 158  
tion: When you put that display in the window that you  
told us about this morning, was that when you first got  
the Beech-Nut cigarettes?

A. Yes; that was my own idea.

X-Q. 57. And that is why you put it in the window?

A. That was my own idea, because I liked to do busi-  
ness with Lorillard, because they are fair in their  
methods; whatever they promise you, they do, and that  
is what all concerns will not do. I would do more for  
them than anybody else, because they are more fair than  
any other concern, and that is why I do all I can for them  
at all times, because they are fair in every way.

X-Q. 58. You are a great admirer of Lorillard Com- 159  
pany?

A. I am, because they are very fair and square,—  
that is the reason. Also The American Tobacco Com-  
pany is very fair but Lorillard is really the best of all  
concerns.

X-Q. 59. Are you acquainted with Mr. Belt, Vice  
President of the Lorillard Company?

A. Yes; they all come over here to see us.

X-Q. 60. Do you remember whether he came to see  
you last year?

A. Yes; they all come right along, all the representa-  
tives of the different companies; it is not only Lorillard,

160 but the other concerns in the same way. They want to know what is going on, especially when they put out a new piece of goods.

X-Q. 61. He is a good friend of yours?

A. No, not any more than anyone else, but I like their style of doing business, because they are doing business in a business way.

X-Q. 62. And you would not want to do anything or say anything to hurt the Lorillard Company?

A. No, but if they would do what is not right, I would just as well tell them to go to the dickens as anybody else. If anyone is fair, I am fair with them. But they  
161 are always very fair.

X-Q. 63. When you made this display of this Beech-Nut gum and Beech-Nut cigarette and Beech-Nut Scrap tobacco when you first got the Beech-Nut cigarettes, did you find that cigarette sold in your store pretty well?

A. Well, they sold pretty fair, pretty well. I will tell you why they sold pretty good. They sold pretty good at that time because the Camel cigarettes, and all the other cigarettes were 18 and 20 cents a package, and Beech-Nuts were one of the first ones to come out with a price of 15 cents, and of course there was bound to be a fair marginal profit for the retailer, and of  
162 course on account of that we pushed them. It was the man behind the counter that pushed the cigarettes, because there was a fair marginal profit in them. That is the reason they sold very good at that time.

Mr. Hinton: The last part of the answer is objected to as not responsive.

X-Q. 64. Well, there were 15 cent brands of cigarettes on the market at that time, weren't there?

A. Yes, there might have been, but they were made by small concerns; and then the friends of Lorillard

—Lorillard has a lot of friends in the business, and they would do a great deal for Lorillard, while with the smaller companies they won't do it. All the brands, no matter what brand they put out, they will put themselves out of the way, and push them for the Lorillard Company because of course, they are always fair in their method of doing business. 163

X-Q. 65. And the Beech-Nut cigarette then went quite well from the very beginning?

A. They went very well at that time, because on account of the price, that had a great deal to do with it, the new price of 15 cents. Of course since that time the price on other cigarettes has come down and of course the Beech-Nut cigarettes don't sell so well now. 164

X-Q. 66. They weren't any better than other 15 cent brands on the market, were they?

A. Well, they advertised them, their jobber pushed them all he could; the retailer did all he could, because he made a fair legitimate profit. They would have pushed it just the same if it had been a different name.

Mr. Hinton: The last part of the answer is objected to as argumentative and not responsive, and volunteered.

X-Q. 67. Did they go better than "111"? 165

A. Well, "111," they didn't work it quite as well; the American Tobacco Company didn't have as many friends as the Lorillard Company, and of course it wouldn't sell quite as well. It means the more friendship you have in the business, the better it goes.

X-Q. 68. The "111" were put out by the American Tobacco Company?

A. Yes, sir.

X-Q. 69. And that is a 15 cent cigarette?

A. "111" sell for 10 cents,—I think at that time it

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166 sold for 15 cents, but they have changed the package since then, and it sells for 10 cents.

X-Q. 70. And the American Tobacco Company is a very large concern?

A. Yes, sir.

X-Q. 71. So far as you know, it is about as large as P. Lorillard Co.?

A. Yes, but probably at that time I would not do as much with them—I didn't buy the goods direct, but of course that is understood—

X-Q. 72. But you found the "Beech-Nut" cigarettes went better than "111"?

167 A. Yes, because I made a display. If I didn't make a display in my window on my own account, if there didn't anything appear in the window, I don't think they would have sold so well. If I go and put Beech-Nut gum into the window, and I put in the whole window Beech-Nut gum, I am going to sell a lot of Beech-Nut gum; if it is a good article it will repeat, and if it is not, it won't repeat,—I will sell it once and never again. I can sell anything I put in the window, in a busy section of the city where I am, because the people go by and see it, and they come in and buy. If I didn't put any cigarettes in the window I would not have sold  
168 so many. It was my own effort; it was my own work which helped it. It also helped the Beech-Nut gum. When I had Beech-Nut gum in the window I sold more Beech-Nut gum, because I had it in the window, it helped the Beech-Nut gum along as well.

X-Q. 73. Mr. Bieringer, just one more question: Do you know whether Scrap chewing tobacco sells well or poorly in this territory?

A. Scrap tobacco is not a big seller in this market; it sells more out West; it sells big out West, but we never sell a big amount of Scrap tobacco. Everybody keeps it, but I don't call it a fast seller. Cut Plug is

the best seller in this part of the country. If I put 169  
Scrap tobacco in the window, Beech-Nut Scrap, it will  
sell, because there are a lot of the people who come from  
out West, and if they don't see it, they will buy some-  
thing else, but if you put it in the window, where they  
can see it, it sells. I manage to put Scrap tobacco in  
the window always, because people from out West see  
it in the window and they feel at home. You can sell  
anything you put in the window,—the window is a great  
salesman.

X-Q. 74. And you mean it doesn't make any differ-  
ence what the name is, if you put it in the window. it  
will sell?

170

A. As I said before, if you make your Beech-Nut  
gum poor, and only one lot, it will spoil it. If you  
make your Beech-Nut cigarettes poor, they won't sell.  
It is not the name. Of course, it is a good idea for a  
manufacturer to advertise, but that don't make the  
goods at all. If the goods are not good the merchan-  
dise will be killed.

X-Q. 75. Well, I suppose if you got an attractive  
name, you might sell the first package, or some of it,  
but if it was not good the customer would not buy any  
more of it?

A. He would not come back again. Those brands 171  
never live; they live only a short time. You see the  
Beech-Nut cigarette is a pretty fair seller. If it was  
not a good cigarette it would not sell at all, it would  
be dead and buried by this time; nobody would know  
about it no more. Poor brands, they come on the mar-  
ket, and they go out just as fast as they come in, if  
they are not good merchandise. Lorillard has been al-  
ways successful in their brands; when they put out a  
brand and advertise you can know it is going to go.

X-Q. 76. Always good?

A. Always good; every brand they make is.

172 X-Q. 77. Now, your answer suggested one more thought to me. Would you consider the Lorillard Beech-Nut cigarette to be their highest quality that they make?

A. It is as good as many of their other brands, as the Camel cigarette, which costs more.

X-Q. 78. Is it as good as the Egyptian Dieties?

173 A. I would not say that, because I never made any cigarette; but the Egyptian Dieties is a different brand, it is a Turkish tobacco, and makes a better cigarette than the other tobacco, I suppose. I would not say that is so, but I suppose it is a different tobacco, and it has a market. But Beech-Nut is just like Camels, Camels is higher price, but the Beech-Nuts are just as good.

X-Q. 79. But so far as quality goes, it is higher quality, is it not?

A. I can't give you a correct answer on that; I can't tell you. I can tell you about cigars, but cigarettes, I can't tell you. The only way is to open the package by a manufacturer and he can tell you what is in the cigarette itself. I don't know.

X-Q. 80. Then you consider the Beech-Nut cigarettes the highest grade they make?

174 A. Yes.

X-Q. 81. And Beech-Nut cigarettes—

A. (Witness interrupting): Of course there is more money made on high-grade cigarettes; they spend more in advertising them, and their profit is bigger; no matter what it is, on the other grade there isn't so much profit in it. I suppose there is a bigger demand. The high priced cigarettes, you don't sell so many of them as you do of the middle priced cigarettes, because there are more poor people than rich people. A brand like Camel is a much better brand, I would say, than a brand like the Dieties, because there are more people

who would smoke them; there are more middle people, you know. Everybody can't afford to pay a quarter for a package of cigarettes, when they would pay 15 cents. (The witness, when answering this question, was handling a package of Egyptian Dieties). 175

X-Q. 82. Now, you consider the Pall Mall and the Egyptian Diety to represent a class of cigarettes sold to—

A. To the higher class people.

X-Q. 83. Sold to what?

A. To the better class of people.

X-Q. 84. At a higher price?

A. At a higher price. 176

X-Q. 85. Representing to-day probably a higher quality of goods?

A. Supposed to be. When you pay a higher price for anything you are supposed to get a better merchandise, but it may not be.

X-Q. 86. And the Beech-Nut cigarette would be a second grade?

A. Yes.

Mr. Hinton: That is all.

*Re-direct Examination.*

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R-D Q. 55. (By Mr. Cavanagh.) In your last answer, will you state whether or not the Beech-Nut is second grade in price, or whether it has a standing in its line?

A. As I said before, I don't know what is in the cigarette, what it is made of, only it is a second grade price,—I would make it better that way, it is a second price.

R-D Q. 56. Will you state whether or not at the price at which it sells you would consider that it is a cigarette of quality?



- 178 A. It is a very good cigarette in quality at the price, as good as any, and better than most of them.

R-D Q. 57. Will you state whether or not you have ever tried to sell any Beech-Nut cigarettes, or ever did sell any Beech-Nut cigarettes on the reputation of the Beech-Nut Packing Company or the Beech-Nut gum?

Mr. Hinton: Objected to as calling for a conclusion of the witness.

Mr. Cavanagh: Mr. Cavanagh is calling for a fact, and not any conclusion.

- 179 A. No, never.

R-D Q. 58. In your experience is it necessary to sell any Lorillard produce on the reputation of the Beech-Nut Packing Company?

A. No.

R-D Q. 59. Now, in your cross-examination you were referring to some window, and the fact that you had a display of both Beech-Nut gum and Beech-Nut cigarettes in the window?

A. Yes.

R-D Q. 60. Will you state whether or not any Lorillard man told you to decorate that window in that way?

- 130 A. No, nobody told me anything about making that display. It was my own idea. If I had expected any trouble from it, I would not have done it, because I didn't have nothing in my mind at all, just made a Beech-Nut window exclusively.

R-D Q. 61. Now, in your cross-examination, probably as a tobacco man, you have been asked considerably about our opinion as to one kind of goods helping the other. Will you state from your experience if the Beech-Nut gum was a poor quality so that the customer did not want it, but the Beech-Nut cigarette was of a good quality and in demand, would the fact that the

gum was of a poor quality interfere with the sale of the cigarette? 181

A. If the gum was of a poor quality it would spoil the sale of the cigarette, you mean?

R-D Q. 62. Yes.

A. Well, if it was a poor quality it might spoil the name in a way,—it might do that.

R-D Q. 63. I am speaking now of Lorillard's Beech-Nut cigarette.

A. Yes.

R-D Q. 64. Whose reputation does that sell on, so far as you know?

A. It sells on the reputation of P. Lorillard Co. 182

Mr. Hinton: Objected as attempting to make the witness change his answer.

R-D Q. 64. Would you say from your experience whether or not the reputation of a tobacco manufacturer would depend upon the reputation of a bacon manufacturer, or of a chewing gum manufacturer?

A. No, it would not.

Mr. Hinton: Objected to as a hypothetical question containing an assumption of facts which are not sufficiently complete, and as calling for the opinion of the witness. 183

R-D Q. 65. Will you state whether or not you ever had any customer order from you cigarettes in the name of the Beech-Nut Packing Company?

A. No.

R-D Q. 66. And will you state whether or not you ever sold a Beech-Nut cigarette as the product of the Beech-Nut Packing Company?

A. No, sir.

Mr. Cavanagh: That is all.

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*Re-cross Examination.*

R-X Q. 88. (By Mr. Hinton.) In your last answer you mean you never told any customer that the cigarettes were the product of the Beech-Nut Packing Company?

A. No. In fact, they didn't ask me. The customers don't ask who they were made by. They want the goods, the merchandise all the time, and you can ask customers, and I don't think they are able to tell you who they are made by.

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Mr. Hinton: The last part of the answer is objected to as not responsive, and volunteered, and as a conclusion of the witness.

That is all.

Mr. Cavanagh: That is all.

Deposition closed.

Signature waived.

HASKELL SHARF, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

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Q. 1. (By Mr. Cavanagh) What is your name, age, residence, and occupation?

A. Haskell Sharf.

Q. 2. Your age?

A. 38.

Q. 3. Your residence?

A. 183 Walnut Street, Chelsea.

Q. 4. And your occupation?

A. Manager cigar store.

Q. 5. Where is this cigar store located?

A. It is 253 Atlantic avenue.

Q. 6. Boston?

187

A. Boston, yes.

Q. 7. What kind of goods do you sell in this store?

A. We sell all the popular brands.

Q. 8. Of what?

A. Of cigarettes and tobacco and cigars.

Q. 9. Do you sell any confections?

A. Yes; confections.

Q. 10. What kind?

A. Candy, chewing gum, tonic, besides cigars, cigarettes and tobacco.

Q. 11. Do you know of the P. Lorillard Co., tobacco manufacturers?

188

A. Oh, sure, since I went in business.

Q. 12. How long have you known of them?

A. I have known them for over six years,—since I have been in that place.

Q. 13. Do you sell the Beech-Nut cigarette and the Beech-Nut Scrap tobacco, like these two packages I show you and which are exhibits in this case?

A. Yes, sir, I sell them.

Q. 14. Do you sell the Beech-Nut chewing gum like this package of Beech-Nut chewing gum?

A. Yes.

Q. 15. Who, if you know, is the manufacturer of Beech-Nut cigarettes and Scrap tobacco?

189

A. P. Lorillard Co.

Q. 17. Who, if you know, is the manufacturer of the Beech-Nut chewing gum?

A. Well, I never knew; I used to buy it direct from the candy man, see; I never interested myself to know who was making it. Of course I knew it was not P. Lorillard Co.,—it was a name which was strange. I don't sell much of that Beech-Nut gum, and I was not buying much of it, so it didn't interest me,—I used to get it from the candy man.

190 Q. 18. You recognize the package of Beech-Nut chewing gum when you see it, don't you?

A. Oh, sure.

Q. 19. State whether or not you were ever confused or deceived into believing that P. Lorillard Co., the tobacco manufacturers, were also manufacturers of the Beech-Nut chewing gum?

A. No, sir, of course not. I always know that, that they were different manufacturers from the cigarette; that the Beech-Nut cigarettes were made by P. Lorillard Co.

191 Q. 20. Whose name appears on the packages of Beech-Nut cigarettes?

A. P. Lorillard Co. with a revenue stamp on it, which the Beech-Nut gum has not got.

Q. 21. State whether or not you ever heard any comment or inquiries or remarks from customers which would lead you to believe that they thought that the manufacturer of the Beech-Nut chewing gum was also the manufacturer of the Beech-Nut cigarettes and the Beech-Nut Scrap tobacco?

192 A. I never heard anybody come in and put up the question, or ask if they were made by the same people. They see the Beech-Nut cigarette advertised before they come to get it, see the name on it, P. Lorillard Co., that make all the B. L. tobacco, and all the Scrap tobacco, and that sort of thing, and they know just as well as I did who was making it, because they always saw it advertised on the posters in the window, see,—Beech-Nut cigarettes, made by P. Lorillard, so you see they saw it before they came into the place. Their question was answered in the window on the posters.

Mr. Hinton: All of the answer after the first sentence objected to as a mere opinion and conclusion of the witness offered without the slightest foundation.

Q. 22. As I understand you, the name P. Lorillard Co. 193  
appeared on the advertisement and on the packages  
themselves?

A. Yes; on the package, yes.

Q. 23. Did you ever buy or sell a package of Lorillard  
Beech-Nut cigarettes, or a package of the Lorillard Scrap  
tobacco under the impression or representation that it  
was a product of the Beech-Nut gum people?

A. No, sir.

Q. 24. State whether or not you ever heard any cus-  
tomer ask in your store or elsewhere for a package of  
cigarettes, Beech-Nut cigarettes, or Beech-Nut Scrap  
tobacco, made by the same people that make the gum? 194

A. I have not heard it, no.

Q. 25. Do you have any difficulty in reading the name  
"P. Lorillard Co." through this glazed paper wrapper?

A. No; I could see it very plain, because we handle  
so many of them we know exactly who makes them.  
It would never enter my mind that that was made by  
any other concern than P. Lorillard.

Q. 26. State whether or not it is the practice in the  
tobacco business to wrap cigarette packages in trans-  
parent paper?

A. Yes, most all of them in the last three years.

Q. 27. State whether or not you ever knew the manu- 195  
facturer of the gum to put out any tobacco products?

A. No.

Q. 28. Did you ever know or hear of P. Lorillard Co.  
putting out food products, or chewing gum?

A. No.

Q. 29. State whether or not you regard tobacco as  
the same or a different class of goods from confections,  
chewing gum, beverages and food products?

A. I consider it is a different product, sure.

Q. 30. Would you ever confuse a package of this  
Beech-Nut Scrap tobacco, or a package of these Beech-  
Nut cigarettes of the Lorillard Company with a package

196 or box of the Beech-Nut chewing gum, such as is before you here?

A. No, sir.

Q. 31. Why not; what is the reason for your answer?

A. Well, they always come in and ask for Beech-Nut cigarettes, see? if he wants gum he says, "Beech-Nut gum", or "Beech-Nut cigarettes", if he wants them.

Q. 32. A man, if he came into your place and wanted a package of chewing gum, and took a package of Beech-Nut cigarettes or a package of Beech-Nut Scrap tobacco in place thereof, what would your opinion of him be?

A. You mean—

197 Q. 33. If a man came in and wanted a package of chewing gum, and he walked out with cigarettes, or a package of the Scrap tobacco, what would you think of him?

A. Well, I would consider him as not being awake, or being crazy. If he wanted cigarettes he would not accept gum, or if he wanted gum he would not accept Beech-Nut cigarettes,—that is out of the question.

Q. 34. State whether or not you have any difficulty in distinguishing the appearance of the Beech-Nut Scrap tobacco package and the Beech-Nut cigarette package from the gum package?

198 A. Well, there is a difference in appearance, and that trade-mark,—they have the "Beech-Nut Cigarette", and "Beech-Nut Scrap" different from the Beech-Nut gum,—you can easily see the difference.

Q. 35. You can readily discern the difference in the appearance of the packages?

A. Oh, sure.

Q. 36. Did you ever know of the Beech-Nut gum manufacturers putting out a package of goods resembling in appearance this package of Scrap tobacco of Lorillard's?

A. No.

Q. 37. Did you ever hear or know of them putting out

a package of goods resembling the Serap tobacco package? 199

A. No.

Q. 38. What is the reputation of the P. Lorillard Co. in the tobacco business, so far as you know?

A. Well, the majority claim it is a high grade tobacco that they are putting out. They established their name by that; that is what makes them sell their brands, it has been so many years in the market. In order to work up a name, I suppose they had to put in high grade tobacco.

Q. 39. State whether or not any representative of P. Lorillard Co., or any jobber or wholesaler, from whom you purchase the Beech-Nut cigarettes or the Beech-Nut Serap tobacco ever represented to you that these were products of the same people who made the gum? 200

A. No; never did.

Q. 40. State whether or not in your experience it is the practice in the trade to use the word "Quality" or some similar expression to indicate a high grade of goods?

A. The word "Quality" is used.

Q. 41. On this package of Beech-Nut cigarettes, I call your attention to the words "Perfect Quality". Whose name appears in conjunction with that statement?

A. P. Lorillard Co. 201

Q. 42. What class of customers do you handle in your store?

A. Well, different kinds; we have a good many of the laboring class.

Q. 43. About how many a day, approximately?

A. Well, about 200 or 300 customers.

Q. 44. Two or three hundred?

A. Yes.

Q. 45. Did you ever know of any of these customers being confused, or under the impression that the Beech-Nut Serap tobacco, or the Beech-Nut cigarettes were made by the Beech-Nut gum people?



202 Mr. Hinton: Objected to as calling for a mere conclusion and opinion of the witness and answer based on hearsay.

A. No; never have.

Mr. Cavanagh: I think that will be all.

*Cross-Examination.*

X-Q. 1. (By Mr. Hinton) How many people work in the cigar store that you are manager of, Mr. Sharf?

A. I am there alone.

203 X-Q. 2. You are there alone?

A. Yes, sir.

X-Q. 3. You manage it yourself, then?

A. Yes; I manage it myself.

X-Q. 4. Now, do you ever have people come in your store and ask for just "Beech-Nut" without specifying whether they want the gum or cigarettes?

A. No,—no.

X-Q. 5. You don't remember that?

A. I don't remember that, no.

204 X-Q. 6. When you put in the Beech-Nut cigarettes, do you remember how you came to put them in? In other words, did a Lorillard man or a jobber, come around to you and tell you that they were coming out with this brand of cigarettes?

A. Yes; I had the Lorillard man around telling me,—taking my orders.

X-Q. 7. Telling you you ought to take them,—ought to carry them?

A. Yes.

X-Q. 8. And you knew they were a Lorillard product before you ever put them in?

A. Yes, sir.

X-Q. 9. Now, you say you don't remember having

heard any customer make any comments, remarks or inquiries about these Beech-Nut cigarettes, and who they were made by? 205

A. No; I have not had that.

X-Q. 10. You don't remember any such remarks or inquiries?

A. I don't remember any, no.

X-Q. 11. Were you trying at the time, we will say a year ago, to remember,—or were you asked to make a note of, or remember any such remarks that you might hear?

A. No.

X-Q. 12. You never paid any particular attention to that; you would not pay any particular attention to that, would you? 206

A. No, it never came to my mind.

X-Q. 13. I suppose waiting on a great many people every day, you hear a lot of things that you don't remember?

A. Yes; don't remember, sure.

X-Q. 14. And you might have heard such remarks and forgotten them, of course?

A. I might have, but I don't remember any.

X-Q. 15. You don't think you did?

A. I don't think I did; no.

X-Q. 16. In the ordinary case a man who is buying Camel cigarettes, for instance, comes in and says, "Give me a package of Camels" and puts down his money and takes the goods and walks out? 207

A. Yes.

X-Q. 17. And he don't discuss with you who made them?

A. No.

X-Q. 18. And you can't tell by looking at his face when he walks in, or by looking at the back of his head when he walks out, what he thinks about that?

A. No.

208 X-Q. 19. And nobody ever told you about these Beech-Nut cigarettes, who they were made by,—none of your customers ever said anything like that to you?

A. Well, most of them knew, I suppose.

X-Q. 20. Did they tell you?

A. Well, some of them that come in, yes, I suppose they know, because most of them that use regularly tobacco, some of them knows just exactly who makes them.

X-Q. 21. Do they tell you that?

A. Sometimes they do.

X-Q. 22. How many have you had tell you that?

A. Oh, very few.

209 X-Q. 23. Well, how many?

A. I couldn't tell you exactly, just a few.

X-Q. 24. Five?

A. Five, probably, something like that.

X-Q. 25. Then five people told you they knew who made the Beech-Nut cigarettes?

A. Well, there is no question but certain of them do; they seem to know that they are made by P. Lorillard. Sometimes they come in and ask, Is it the very same—are these Beech-Nuts, naming not only the signatures but the brand, the very same made by, as the others,—he says the name, Beech-Nut cigarettes.

210 X-Q. 26. Some of them name the Beech-Nut cigarettes?

A. Yes; it seems to me they know who made them.

X-Q. 27. Well, I want to know what they said?

A. Well, the question is whether they were made by P. Lorillard Co.

X-Q. 28. They said so?

A. Yes, sir.

X-Q. 29. They said the Beech-Nut cigarettes were made by P. Lorillard Co.?

A. Yes.

X-Q. 30. About five people would come into your store,

and they said that the Beech-Nut cigarettes were made 211  
by P. Lorillard Co.?

A. I couldn't say four or five, but some.

X-Q. 31. They came in and said that the Beech-Nut  
cigarettes were made by P. Lorillard Co.?

A. I can't say exactly whether it is so or not, but I  
think I heard it.

X-Q. 32. Who started the conversation, did they start  
the conversation?

A. Did they start it? Yes.

X-Q. 33. They would come up and say, "Beech-Nut  
cigarettes are made by P. Lorillard Co.," and walk out,—  
perhaps buy a package and walk out?

A. Yes.

212

X-Q. 34. Is that the way it happened?

A. Well, it happened this way: We have packages,  
like the Beech-Nut Scrap tobacco, made by P. Lorillard,  
and these Beech-Nut cigarettes came out later, and they  
would say, "We know they are making the cigarettes,  
too, the same company that makes the scrap tobacco."

X-Q. 35. They would start the conversation in that  
way?

A. Yes, sir.

X-Q. 36. That is, you would be standing there and a  
man would come in and say, "I know the cigarettes are  
made by P. Lorillard Co.?" 213

A. Yes, sir.

X-Q. 37. How about the Camel cigarettes, would  
people come into your store and say, "I know the Camel  
cigarettes are made by the Reynolds Company?"?

A. Yes, sir.

X-Q. 38. They would come in and tell you that?

A. Yes.

X-Q. 39. How about the Fatima cigarettes, do they  
come in and tell you that they know the Fatima cigar-  
ettes are made by Liggett & Meyers?

A. I haven't had them.

214 X-Q. 40. It has been just the Beech-Nuts and Camels where they have done that?

A. Just the Beech-Nuts and Camels. Perhaps the same thing happened with the Fatimas, I can't say that.

X-Q. 41. You didn't start the conversation at all?

A. No.

X-Q. 42. You never had them ask you who makes these Beech-Nut cigarettes?

A. No.

X-Q. 43. Or any of them?

A. No.

215 X-Q. 44. But you have had them tell you who made them?

A. Yes.

X-Q. 45. Did you ask them?

A. No; of course I knew who were making them, so there was no reason for me to ask them.

X-Q. 46. So your statement with respect to what everybody knows, or what the customers know, is based upon about five people, as you say, walking into your store and saying that the Beech-Nut cigarettes are made by P. Lorillard Co.?

216 A. Yes, and it seems to me—it is foolish probably—that they know the Beech-Nut cigarette is made by P. Lorillard ; it may be just because I was handling them and was used to it.

X-Q. 47. Probably because you knew yourself?

A. I knew myself, but it seemed to me that they all came in and knew they were made by P. Lorillard.

X-Q. 48. Now, there are two ways in which you could get that impression, one is by being a mind reader, the other is by having a customer tell you. Now, you say that there weren't more than five persons came and told you voluntarily who made them, and the rest didn't say anything.

A. The conversation was not to me, it was just talking between themselves, having a conversation.

X-Q. 49. An argument?

217

A. Well, no, no argument; they just happened to talk that P. Lorillard is making this brand, and this brand, because there are a lot of other brands. Sometimes they figured how many brands they controlled, and all that, of cigarettes; they figured Murads and Moguls, and all that, and they named the Beech-Nut cigarettes.

X-Q. 50. You had customers say that they made the Murads and Moguls?

A. Murads, Moguls, Trophies and Egyptian Dieties, and so forth.

X-Q. 51. Your customers know that the Murads, and so forth, are made by P. Lorillard?

218

A. Yes.

X-Q. 52. They know that the Camels are made by Reynolds?

A. Some of them, I suppose. Of course I know myself, but I don't think all the customers know the various brands, but they know about these Beech-Nuts.

X-Q. 53. And they know that the Fatimas are made by Liggett & Meyers,—do you think all your customers know that?

A. I wouldn't say all, but most of them, because the regular smoker notices the package, and it says on the package where it is made,—who makes it.

219

X-Q. 54. They never told you that,—that is a guess on your part, isn't it?

A. Yes.

X-Q. 55. And all this about what they told you is just guess-work, isn't it, on your part?

A. Yes, I suppose they know.

X-Q. 56. Not more than five people, you say, ever mentioned it to you?

A. Yes; but I could hear the conversation, saying the brands which were made by P. Lorillard, also naming the Beech-Nut cigarette.

220 X-Q. 57. They began by reciting the list of brands made by the Lorillard Company?

A. Yes, sir.

X-Q. 58. A certain percentage of your customers did, but you don't know how many?

A. I don't know how many; I never thought it would come up, so I didn't keep tabs.

X-Q. 59. It is just an opinion on your part?

A. Yes.

X-Q. 60. Now, Mr. Sharf, what is printed on a package of Camel cigarettes underneath the picture of the Camel?

221 A. Well, the most that you see is the Camel itself.

X-Q. 61. Yes, but what is printed under the picture of the camel, do you know?

A. Under the picture?

X-Q. 62. Yes?

A. Why, the name, I guess.

X-Q. 63. What name?

A. Reynolds, I think.

X-Q. 64. Well, that is just a guess, isn't it; you don't know that it is?

A. I don't know, that is so, but the camel,—the camel is what attracts,—the picture of the camel attracts.

222 X-Q. 65. Oh, that is the way you identify the package?

A. Yes, sir.

X-Q. 66. Now, how about the Lucky Strike cigarettes? What is printed on the package of Lucky Strike cigarettes underneath the red panel?

A. Underneath, then it is the name,—of course it is the name.

X-Q. 67. What name?

A. American Tobacco Company.

X-Q. 68. That is printed right on the package of Lucky Strike cigarettes, near the bottom?

A. Yes.

X-Q. 69. You have seen it there?

223

A. I think so; I can't say, but I think so.

X-Q. 70. I show you a package of Camel cigarettes and you observe that the name "Reynolds" is not printed underneath the picture of the camel?

A. No; it is on the other side.

X-Q. 71. Perhaps you will take my word for it that the name American Tobacco Company is not printed underneath the red panel on the Lucky Strike package.

A. Perhaps not.

X-Q. 72. Now, how many cigarettes, Camel cigarettes, do you handle in the course of a week,—just a rough guess?

224

A. About 8,000 or 10,000.

X-Q. 73. And how about the Lucky Strikes?

A. About the same.

X-Q. 74. And in spite of the fact that you hand out, if you do hand out, this large number of Lucky Strike and Camel cigarettes, you never happened to notice what was printed on the front of the package, did you?

A. Well, I did, but not on all, of course. I did of course, but I would not remember; but I always notice it when I pick up a package, I always notice it quickly.

X-Q. 75. You notice it every time you pick up a package?

225

A. Yes.

X-Q. 76. And you notice it 8,000 times a week, or more.

A. Oh, sure.

X-Q. 77. But you don't remember it?

A. No.

X-Q. 78. Now, if you never noticed what is printed on the front of a package of Camel cigarettes underneath the picture of the Camel in spite of the fact that you hand out so many packages, would you expect your customers to notice and remember what is printed on



226 the front of that package underneath the picture of the camel so that they could tell you?

A. Well, I suppose some of them would and some of them would not.

X-Q. 79. Well, very few though?

A. Very few,—I suppose a few do.

X-Q. 80. Would you expect your customers, all of them, to notice this name, "P. Lorillard Co." on this package?

A. Well, I do. It is right on the front there. I should expect them to. I don't know whether they do or not, but it is right on the front there.

227 X-Q. 81. You never heard any of them say they had seen it there?

A. Well, it never came out, such conversation as that.

X-Q. 82. Yes; it is an opinion of yours?

A. Yes, an opinion, because it is right there on the front of the package.

X-Q. 83. But they would not see what is on the front of the Camel cigarette?

A. Well, they always advertise them; they should know, because they have been putting out posters and advertisements of Beech-Nut cigarettes.

X-Q. 84. Do they advertise the Camels?

228 A. The Camels they advertise, they do that with Camels too.

X-Q. 85. Do they do that with the Chesterfields?

A. Yes; I always noticed on the Beech-Nut cigarettes, just on the front of the package, "P. Lorillard Co."

X-Q. 86. Now, what is the striking feature as you think of it now, of the Fatima cigarette; how would you identify a package of Fatima cigarettes, by the picture of a girl on the front?

A. By the picture, no, sir; by the name that is on top of the picture.

X-Q. 87. And Lucky Strike has that red panel on the front? 229

A. Yes.

X-Q. 88. That is what takes your eye?

A. Yes.

X-Q. 89. And the Camels is the picture of a camel?

A. Yes.

X-Q. 90. That central device is the conspicuous feature of the package?

A. Yes.

X-Q. 91. In other words, you could give me a pretty good picture of the central panel on the Lucky Strike?

A. Yes.

X-Q. 92. And the picture of the Camel on the Camel cigarettes? 230

A. Yes.

X-Q. 93. And the picture of the girl on the Fatima cigarettes?

A. Yes.

X-Q. 94. And the sloping name on the Chesterfields?

A. Yes.

X-Q. 95. That is what takes your eye and that is what you spot the package by?

A. Yes.

Mr. Hinton: That is all.

231

*Re-direct Examination.*

R-D Q. 46. (By Mr. Cavanagh.) I just want to ask you one question: Who makes the Lucky Strike cigarette?

A. American Tobacco Company.

R-D Q. 47. And who makes the Camel cigarette?

A. Reynolds.

R-D Q. 48. And who makes the Fatimas?

A. The Fatimas let me see,—it is on my tongue, but I can't just say.

- 232 R-D Q. 49. You can't recall who makes the Fatima?  
 A. I can't remember exactly, I can't recall that.  
 R-D Q. 50. Who makes the Murad?  
 A. P. Lorillard.  
 R-D Q. 51. Who makes the Mogul?  
 A. P. Lorillard.

Mr. Cavanagh: I think that is all.

*Re-cross Examination.*

- 233 R-X Q. 96. (By Mr. Hinton.) Does the Fatima sell more or less than the Beech-Nut cigarette, in your store?  
 A. Well, they sell a little less. It is a higher priced cigarette, you see.  
 R-X Q. 97. Which one do you sell the most of, the Fatima or the Beech-Nut?  
 A. The Beech-Nut.  
 R-D Q. 98. Much more?  
 A. Well, quite a little.  
 R-D Q. 99. But you sell an awful lot of Fatimas?  
 A. Well, we sell quite a few, but not as many.  
 R-D Q. 100. It is one of your leading brands?  
 A. Well, as against the Fatimas, of course the Beech-Nut, but the Camels is the leading one.  
 234 R-D Q. 101. The Fatimas would be among the first five you sell?  
 A. Yes, sir; it is among the leading brands.  
 R-D Q. 102. And you don't remember who makes the Fatimas?  
 A. I do remember, it is on my tongue, the name, of course, but I can't say.

Mr. Hinton: That is all.

Mr. Cavanagh: That is all.

Deposition closed.

Signature waived.

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ELEAZER LEBEWOHL, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Eleazer Lebewohl.

Q. 2. Age?

A. 50.

Q. 3. Your residence?

A. 28 Brainerd Road, Allston.

Q. 4. And your occupation?

A. Cigars, tobacco and men's furnishings.

Q. 5. Where is your store located?

A. 69—71 Causeway Street, Boston.

Q. 6. Are you the owner of this store?

A. Yes, sir.

Q. 7. How long have you been in the cigar and men's furnishings business?

A. Well, I am 30 years in cigars and tobacco, and about 18 in men's furnishings.

Q. 8. Do you sell any other kinds of goods in the store besides tobacco products and men's furnishings?

A. Oh, yes; we sell candy and gum.

Q. 9. Is this store located in a business or residential section?

A. In a business section, right near the North Station.

Q. 10. About how many customers do you serve, in a general way?

A. Why, I would imagine about 800 a day.

Q. 11. Do you handle cigarettes?

A. Yes.

Q. 12. What brands do you handle?

236

237

238 A. Oh, we handle most all of the popular brands of cigarettes.

Q. 13. Do you know of the P. Lorillard Co.?

A. Oh, yes; done business with them since I have been in business.

Q. 14. How long is that?

A. 30 years.

Q. 15. What is the reputation of P. Lorillard Company in tobacco?

A. One of the leaders and one of the oldest in the world, I always understood.

239 Q. 16. Who, if you know, makes the Beech-Nut cigarette, like this exhibit package and the Beech-Nut Scrap tobacco like this exhibit package?

A. P. Lorillard Co. Their name is right on there.

Q. 17. Were you ever under the impression that those were made by any other concern than P. Lorillard Co.?

A. No; never.

Q. 18. What kind of gums do you handle?

A. We handle Wrigley's—well, Spearmint, of course, and Beech-Nut, and Pepsin. That is about the only thing.

Q. 19. Who, if you know, makes the Beech-Nut gum, like the package which I show you?

240 A. Why, I imagine the gum company, the Beech-Nut Gum Company. Of course I buy them of a jobber, but I always supposed the Beech-Nut Gum people made it.

Q. 20. Did you ever buy any Beech-Nut cigarettes or Beech-Nut chewing tobacco direct from the manufacturer?

A. No.

Q. 21. You buy them through a jobber?

A. Through a jobber; yes.

Q. 22. Were you ever under the impression that the Beech-Nut cigarette and the Beech-Nut Scrap tobacco, like these two exhibit packages, were made by the same people that made the chewing gum?

A. Oh, no; not for a moment, no. They are entirely different products. 241

Q. 23. Did you ever know of any person, or hear any inquiry from any customer which would lead you to believe that such person or customer thought that the Beech-Nut cigarettes and the Beech-Nut Scrap tobacco were made by the people who made the Beech-Nut gum?

A. I never had it come up since I was selling it. If they come in for Beech-Nut gum, they say, "Give me a package of Beech-Nut gum", and if they come in for Beech-Nut cigarettes, they say, "Give me a package of Beech-Nut cigarettes".

Q. 24. Did you ever know the manufacturers of Beech-Nut chewing gum to put out any tobacco products such as Beech-Nut Scrap tobacco? 242

A. No.

Q. 25. Did you ever know or hear of P. Lorillard Co. manufacturing confections, or gum?

A. No; only tobacco.

Q. 26. State whether or not you have ever seen a package of Beech-Nut cigarettes which did not have the name "P. Lorillard Co." on it?

A. Always like that, to my knowledge.

(Witness refers to exhibit package of Lorillard Beech-Nut cigarettes.) 243

Q. 27. And likewise state whether or not you ever saw a package of Beech-Nut Scrap tobacco which did not bear the word "Lorillard" on it?

A. Never.

Q. 28. To what extent, if you know, does the P. Lorillard Co. advertise its tobacco and cigarettes in this Boston neighborhood?

A. Well, I know that every brand they put out, they advertise it very extensively, but the extent of the

244 advertising I cannot state. I know that their brands are well advertised, and that there is a demand for them, created by their advertising.

Q. 29. State whether or not in your opinion the Beech-Nut Scrap tobacco and the Beech-Nut cigarettes of Lorillard are sold on the reputation of the Beech-Nut Packing Company?

Mr. Hinton: Objected to as calling for a mere opinion of the witness.

A. No; Lorillard's reputation only.

245 Q. 30. Would you have any difficulty in reading the name "P. Lorillard Co." on the cigarette package, or the name "Lorillard" on the Beech-Nut Scrap tobacco package?

A. No; it is right on the face of the package,—right on the face,—you can't help seeing it. It is just the same as the other products that they advertise.

Q. 31. Would you have any trouble in reading that name through the glazed paper?

A. No.

246 Q. 32. Would you have any difficulty in distinguishing the general appearance of the Beech-Nut cigarette package and the Beech-Nut Scrap tobacco package from the gum package?

A. No; the appearance and everything is entirely different,—the size and general appearance.

Q. 33. Did you ever buy or sell the Beech-Nut Scrap tobacco, or the Beech-Nut cigarettes as the product of the Beech-Nut gum people?

A. No.

Q. 34. There was never any confusion in your mind about it?

A. No, none whatever.

Q. 35. State whether or not you regard tobacco and

cigarettes as being of the same or a different class of goods from the chewing gum? 247

A. Entirely different.

Q. 36. And if a customer wanted to purchase some Beech-Nut chewing gum and went away with a package of these Beech-Nut cigarettes or a package of Beech-Nut Scrap tobacco in place of it, what would be your opinion of him?

A. Demented.

Q. 37. State whether or not you ever had any jobber represent to you, or sell to you Beech-Nut cigarettes or Beech-Nut Scrap tobacco as the product of the Beech-Nut gum people? 248

A. Never.

Q. 38. Whose product did they sell it to you as?

A. Lorillard's.

Q. 39. How long have you been selling the Beech-Nut cigarettes of Lorillard?

A. Why, since they have been out; just as soon as they came out with their cigarette we put them right in. I can't tell you the exact period, but from the time they started advertising them, we put them right in, just as with all their products; when they come out we put them right in, because we know there is a sale created by advertising. 249

Q. 40. So far as your knowledge is concerned, is it customary to wrap packages of cigarettes in transparent paper like this Beech-Nut cigarette package?

A. Yes, quite a number are wrapped in that way.

Q. 41. State whether or not, so far as you know, it is the trade practice to use the word "Quality" in connection with high grade goods?

A. Always.

Q. 42. Whose name appears in conjunction with the words "Perfect Quality," on this cigarette package?

A. P. Lorillard Co.

Mr. Cavanagh: I think that will be all.



250

*Cross Examination.*

X-Q. 1. (By Mr. Hinton.) Mr. Lebewohl, you run a men's furnishing store and sell cigars and tobacco as a side line?

A. Yes, sir.

X-Q. 2. Do I understand by "men's furnishings" clothing and haberdashery?

A. Well, haberdashery, no clothing, unless you call khaki pants clothing.

X-Q. 3. That store is located in a suburb of Boston?

251

A. Not a suburb; it is on one of the main streets, the street where the North Station is located, Causeway Street.

X-Q. 4. How many clerks have you in your store?

A. At the present time we have two.

X-Q. 5. Including yourself?

A. Yes, sir; three in all.

X-Q. 6. Do you relieve each other?

A. Yes.

X-Q. 7. So that there are always two down there?

A. Oh, yes, always two on duty.

X-Q. 8. Do you sell confectionery of any kind?

A. Confectionery and gum.

252

X-Q. 9. And tobacco and cigarettes?

A. Yes.

X-Q. 10. Now, I wish you would try to remember when you put in these Beech-Nut cigarettes. Did a jobber or some Lorillard agent come to you and get you to stock these goods?

A. The Lorillard agent.

X-Q. 11. And he came around and told you that they were going to put out these goods, and that you should put them in?

A. Yes, sir.

X-Q. 12. And you knew he was a Lorillard man?

A. Yes.

X-Q. 13. And of course you knew before you saw the goods that they were a Lorillard product? 253

A. Yes; they would come in and say they were from the Lorillard people; they always do, no matter what they sell.

X-Q. 14. Now, you testified that people come and ask for Beech-Nut gum. Of course they won't take cigarettes if they want gum, and vice-versa; that is true, isn't it?

A. That is correct.

X-Q. 15. Did you ever have anybody come in your store, that you can remember, and just ask for "Beech-Nut", — "Give me a package of Beech-Nut"? 254

A. Well, I will tell you: When they ask for "Beech-Nut" we usually know that they mean Beech-Nut tobacco, because if they want Beech-Nut gum they generally say, "Beech-Nut gum", but if they say "Beech-Nut" we know that they want a package of Beech-Nut tobacco.

X-Q. 16. Do you have your gum and cigarettes on the same counter?

A. Oh, no; we have a candy stand at the side of the counter, and our cigarettes are on little shelves.

X-Q. 17. If a man walked up to the candy side, the candy counter, and asked for Beech-Nut gum, he would help himself to it? 255

A. Help himself; it is right in sight there.

X-Q. 18. How long have you handled tobacco products?

A. Oh, 30 years,—that is, not in this particular store, but in the store next door. You see they combined the two and we had to get out two years ago.

X-Q. 19. Can you tell me, offhand, what is printed on a package of Fatima cigarettes underneath the picture of the girl?

A. That I can't say.

X-Q. 20. How about Camel cigarettes, do you know

256 what is printed on front of a Camel cigarette package under the picture of a camel?

A. No, I can't say. I have so many different articles, you know, that those things don't fasten to my memory, to tell you truthfully, but I can pick out any particular cigarette that you might call for, but to tell you what was printed on the package, I couldn't do it. My memory is not good enough to do it.

X-Q. 21. And yet you have no difficulty in picking out a package of Camel cigarettes?

A. No; the style of the package is so different, it is easy to pick it out.

257 X-Q. 22. You mean the picture of the camel makes it easy?

A. Yes, and it has a different color from other cigarettes; they all differ somewhat.

X-Q. 23. Could you remember and picture a package of Beech-Nut cigarettes in your mind as to what is on the front of the package?

A. Certainly I can't, what is on the front; but the whole package itself, it is different. That is not any comparison with a package of gum. I suppose you refer to that.

X-Q. 24. No, I was not referring to that.

258 A. But I supposed that was what you referred to by the cigarettes, on account of a package of gum.

X-Q. 25. Now, you testified that you didn't remember that anybody ever came in and asked you whether the Beech-Nut cigarettes, or Beech-Nut scrap tobacco, were made by the gum people?

A. No.

X-Q. 26. Did you pay any particular attention a year ago to remember that, or did you try to make a note to remember if anybody would ask you that question?

A. Why, I didn't; but I knew that the Beech-Nut gum people made food products, see? And therefore if anything of that kind — if they had asked anything of that

kind it would impress it on my mind, because I have bought Beech-Nut bacon and I knew they had other products. To my mind I never knew of anybody to ask that. 259

X-Q. 27. You don't remember that?

A. I don't remember it; if they had, it would have struck me—it would have called my attention to the fact that two big houses like these would have the same name on their products, and I think I would remember that.

X-Q. 28. Did it impress you as strange at the time that two big houses like the Beech-Nut Packing Company and the Lorillard Company should use the same kind of a label on their goods? 260

A. No, because I had the idea that the one was a manufacturer of food products, and the other tobacco products, something entirely different; because the Beech-Nut Packing Company I knew made, as I have said, bacon, and other food products, so I didn't get the idea that they were manufacturing the cigarettes.

X-Q. 29. If a man came into your store to buy Camel cigarettes, he walks up and asks for Camel cigarettes and puts down his money and walks out again?

A. Yes.

X-Q. 30. And unless he happened to tell you, you would not know who he thought made that product? 261

A. No; they never ask.

X-Q. 31. Not being a mind reader you can't tell what they have in their mind, and you can't tell why he is buying the product, or asking for it?

A. No, sir.

X-Q. 32. Do you buy your Beech-Nut gum from a tobacco jobber sometimes?

A. No; I buy it from a confectioner.

X-Q. 33. And your tobacco from another man, usually?

262 A. Yes.

X-Q. 34. When you speak about the reputation of the Lorillard Company, you mean its reputation in the tobacco trade?

A. As being an old, reliable, concern, and handling their merchandise for so many years it impresses it on your mind.

X-Q. 35. You naturally would deal with them on that account?

A. Yes; and the merchandise being so extensively advertised too, you know.

263 X-Q. 36. What are the leading Lorillard brands of cigarettes which you have found to be the best sellers?

A. You mean any cigarettes?

X-Q. 37. Yes.

A. Well, I will tell you: In buying tobacco, I have in mind buying the tobacco, see, and my attention is so much occupied with all the other little details that I cannot tell you right off what they are,—you know, to be truthful to you.

X-Q. 38. Yes.

264 A. You see with the work on both sides of the store,—we work on both sides of the store, and if I am called on the tobacco side, I jump over to the tobacco counter, and I know what the Camel cigarettes are, in the tobacco line; and if I want tobacco, I have my man make out a list, what he knows he wants, and he telephones for it. He handles the tobacco more than I do, in the purchase, but in the selling, he don't. If you were to ask me the different makers a few years ago, I could have told you, but I have had misfortune, and it has rather dulled my memory, to be frank with you, and I can't tell you for that reason.

X-Q. 39. Do you know who makes the Mogul cigarettes?

A. I couldn't tell.

X-Q. 40. Do you know who makes the Murad cigarette? 265

A. I couldn't tell.

X-Q. 41. Do you know who makes the Egyptian Dieties?

A. S. Anargyros.

X-Q. 42. That is a well-known tobacco manufacturer, isn't it?

A. No, not to the extent of Lorillard.

X-Q. 43. It is not?

A. No; the Lorillard products have advertised so much, they have been advertised so much, and we have used so much of their goods that it is impressed on my mind; but if you ask me the tobacco manufacturer of the different cigarettes, I tell you frankly that I have had misfortunes, and that is the reason I can't. In previous years I had charge of the tobacco, before I opened up this store, and at that time I could tell you every little detail. 266

X-Q. 44. Who makes Polar Bear Chewing Tobacco, do you know?

A. Oh, we sell so little of that, that I would not remember.

X-Q. 45. How about Honest Scrap?

A. We don't sell that. 267

X-Q. 46. Now, I wish you would name some Lorillard brands to me?

A. Well, Mail Pouch,—I don't know whether that is or not.

X-Q. 47. How about Sweet Maple?

A. We don't carry that. In plug tobacco, there is not the sale there used to be.

X-Q. 48. How about cigarettes, can you name some of the Lorillard brands of cigarettes?

A. I cannot.

X-Q. 49. You say that the Lorillard products have been so extensively advertised that it has created a great

268 demand for them, but you can't name a single brand of Lorillard cigarettes?

A. That doesn't make any difference, because they come in and ask for their brand, and it may be that I can't remember who makes the cigarettes, but it sells just the same, and I give them the brand they ask for.

X-Q. 50. That is all you are interested in, making a sale of them?

269 A. Yes. The fact that I can't remember, I have explained that my memory in the last few years, through misfortune is such that I cannot remember easily; and besides that I have so many details,—I do all the buying of the furnishings, and my store is quite a large store, and I do more than one man ought to do. The furnishing line, I handle that exclusively myself, and I can tell you everything about the furnishing line.

X-Q. 51. You have on the table in front of you, and have had since you were testifying, a package of Murad cigarettes and a package of Egyptian Dieties?

A. Yes.

X-Q. 52. Will you examine those packages and tell me who makes the cigarettes [referring to a package of Murad]?

A. Anargyros.

270 X-Q. 53. How about the Egyptian Dieties?

A. It is the same. It has "P. Lorillard Co." underneath, but it is in small letters.

X-Q. 54. You would not immediately notice it?

A. Yes, that is so, but that is because I am not so familiar with handling the merchandise as my clerk is, as I explained to you.

X-Q. 55. Now, you are not able to say who makes these various brands of cigarettes, but what are some of the leading brands of cigarettes with you?

A. Well, the best seller we have is Camels, Lucky Strike, Perfection, Sweet Caporal, and then other

similar brands; Beech-Nut goes fairly well.

271

X-Q. 56. Who makes the Camels?

A. There you have got me again, I can't tell you.

X-Q. 57. Who makes the Lucky Strike?

A. I can't tell you that.

X-Q. 58. Who makes the Fatima?

A. I couldn't tell you, sir.

X-Q. 59. Who makes the Chesterfield?

A. The American Tobacco Products,—I think that is the American Tobacco Company,—I think so.

X-Q. 60. As a matter of fact, it is Liggett & Meyers that makes the Chesterfield?

A. Yes, well, perhaps so.

272

X-Q. 61. And the Lucky Strike, the American Tobacco Company; the Camels are made by R. J. Reynolds & Company?

A. Well, of course I don't know, and I said just as I thought.

X-Q. 62. Now, of all the brands of cigarettes and tobacco that have been mentioned this morning, the only one with respect to which you are able to state the name of the manufacturer is the Beech-Nut. Why was that?

A. What; why was it?

X-Q. 63. Yes.

273

A. Why, simply my attention was called to the fact of whether I saw any difference between the Beech-Nut cigarettes and the gum.

X-Q. 64. Was this by someone who wanted you to testify in this case?

A. No, it was not by him.

X-Q. 65. Who called your attention to that fact?

A. One of the salesmen in my store.

X-Q. 66. Did that cause you to look into the matter?

A. Yes.

X-Q. 67. That is what caused you to look into it?

A. Yes.



274 X-Q. 68. And you found that Beech-Nut cigarettes were made by the Lorillard Company, and that the gum was made by another company?

A. Well, I knew that without looking into it; I knew it was made by separate companies. The only thing I noticed about the Beech-Nut was the manufacturer, because, as I told you, I don't remember the manufacturers of the different products. I know we handle them. If I want cigarettes, to buy them, I say, "Ten thousand Camels." I don't care who manufactures them. That is a secondary consideration with me. We don't have to look at the manufacturers, it is

275 the reputation that sells the cigarettes.

X-Q. 69. By advertising it, you mean?

A. Yes, sir.

X-Q. 70. By advertising the brand you make them popular?

A. Yes; if they have merit. If they don't they die. If the brand is well known and liked, they sell.

X-Q. 71. If the brand is well known?

A. Yes.

Mr. Hinton: That is all.

*Re-direct Examination.*

276

R-D Q. 43. (By Mr. Cavanagh): Will you state whether or not you ever sold Beech-Nut cigarettes on the reputation of the Beech-Nut Packing Company?

A. No, I have not.

Mr. Hinton: Objected to as calling for a conclusion of the witness, and as indefinite.

Mr. Cavanagh: The question simply calls for a statement of fact.

R-D Q. 44. Will you state whether or not you ever confused a tobacco manufacturer with a food product manufacturer,—whether you would ever confuse them?

A. I would not.

277

R-D Q. 45 State whether or not you would expect them to put out the same class of goods?

A. I would not.

Mr. Cavanagh: That is all.

*Re-cross Examination.*

R-X Q. 72. (By Mr. Hinton): Do you know anything about Austin Nichols?

A. Austin Nichols?

R-X Q. 73. Yes.

278

A. I do not.

Mr. Hinton: That is all.

Mr. Cavanagh: That is all.

Deposition closed.

Signature waived.

L. G. CAUTO, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. What is your name, age, residence and occupation? Just the name first. 279

A. L. G. Cauto.

Q. 2. Age?

A. Age, 31.

Q. 3. Residence?

A. 23 Hancock Street, West Somerville.

Q. 4. Occupation?

A. Cigar salesman.

Q. 5. For what concern are you a salesman?

A. L. K. Liggett & Company.

- 280 Q. 6. Where is your place of business located?  
A. 128 Tremont Street.
- Q. 7. Is this in a business section or a residential section?  
A. It is one of the busiest sections we have, centrally located.
- Q. 8. How many customers a day, approximately, do you serve?  
A. Over a thousand.
- Q. 9. Have you ever sold the Beech-Nut cigarettes?  
A. Oh, yes, thousands of them.
- Q. 10. And have you ever sold Beech-Nut Scrap Tobacco?  
281 A. No; never put it in.
- Q. 11. Whose product, if you know, is the Beech-Nut cigarette?  
A. P. Lorillard Co.
- Q. 12. How long have you known that to be their product?  
A. Ever since it came out.
- Q. 13. Do you sell Beech-Nut chewing gum?  
A. We do, in our department.
- Q. 14. Who makes the Beech-Nut chewing gum, if you know?  
282 A. I think it is made by the Beech-Nut Products Company, Poughkeepsie, New York, if I am not mistaken.
- Q. 15. I show you a package of Beech-Nut gum, or a box of it. Is that the Beech-Nut gum to which you refer?  
A. Yes.
- Q. 16. Please read the label and tell me who it is made by, and the address?  
A. Beech-Nut Packing Company, Canajoharie, New York.
- Q. 17. Were you ever under the impression that the

Beech-Nut cigarette was made by the same people that make the Beech-Nut chewing gum? 283

A. Oh, no, never.

Q. 18. State whether or not in your experience in Liggett's in selling Beech-Nut cigarettes and Beech-Nut chewing gum you ever heard any comments or remarks which would lead you to believe that a customer or customers thought that the cigarette was made by the same people that made the gum?

A. When the cigarette first came out there was a natural belief, among some of the customers that they were made by the same people that made the gum, but I righted them on it, and put them on the right track. 284

Q. 19. How many customers would you say had that belief at first?

Mr. Hinton: Objected to as calling for a conclusion of the witness.

A. I should say very few. That is a natural thing when a product of that kind comes out. There were a number of customers that came in expecting they were made by the same people, and they would say, "Let me have a package of Beech-Nut cigarettes. Are they made by the same people that make the gum?" And I said, "No, not the same people that make the gum." Those people who said that, I corrected them. 285

Q. 20. Tell me just about how many customers asked you that, in a general way?

A. Well, about, at least 25; that is, among over a thousand customers that we had in a day.

Q. 21. How long ago was that?

A. Oh, that was when they first came out. I haven't heard any comments or remarks since that time, when they first came out. As I say, a few customers would ask about it, perhaps 25 or 30.

286 Q. 22. And that is in one of the busiest stores in Boston?

A. Yes, sir. That thousand customers is putting it low. We sometimes have more than that, but I didn't want to exaggerate it.

Q. 23. As I understand, you haven't had any such inquiries or remarks for some time?

A. No; and just about the time I had those inquiries I was interviewed by the Beech-Nut people.

Q. 24. You mean the Beech-Nut gum people?

A. The Beech-Nut gum people at that time.

Q. 25. How long ago was that?

287 A. That was when the Beech-Nut cigarette had just come out, say within just about a month or so that the Beech-Nut cigarette had been on the market, and they interviewed me with their lawyer.

Mr. Hinton: All questions about the alleged conversation referred to by the witness is objected to as entirely irrelevant, incompetent and immaterial, and as being hearsay.

Q. 26. Will you tell me just what occurred at that conversation?

288 A. They came in and asked me, "Do you think the gum is made by the same people as make the cigarette?" And I said, "Of course not. I sell a lot of your gum, but so far as P. Lorillard is concerned, they wouldn't interfere with your label, because that is a different product." I remember that day I said, "A few of our customers thought they were made by your people, but I corrected them." They told me, "You are the first one who has answered us in that way," and asked me if I would give it in a statement at the Touraine. "That is the truth," I said, "but so far as backing the gum against P. Lorillard Company, I am not in it for that. I believe the gum is one thing and the tobacco another,

different product." That is what transpired at that time, and they never called me up again. 289

Q. 27. You mean they never called you as a witness?

A. No. They said the testimony was good, but never came near me.

Q. 28. As I understand, you were not yourself ever confused into believing that the cigarette was made by the same people who made the gum?

A. Certainly not, because I order the different products for that department, and I have had charge of the department going on 9 years,—I have been there 11 years,—and when the product came out I picked up a package of Beech-Nut cigarettes and I naturally saw the Beech-Nut brand on the package, and I said to myself, that must be somebody besides P. Lorillard who is manufacturing them, but when I saw the name "P. Lorillard Co.", I saw who it was. I ordered them from the New York Department of L. K. Liggett & Company. 290

Q. 29. Did you ever see a package that didn't have the name "P. Lorillard Co." on it?

A. Oh, no. I saw them when they first came out, with no wrapper,—just like that (indicating a package without the glazed paper.)

Q. 30. When you say without a wrapper, what do you mean? 291

A. Without the glazed paper, when they came out first,—it is so far back now on that point I don't remember.

Q. 31. Can you state whether it is customary to wrap cigarette packages in this glazed paper?

A. Yes; because it keeps them dry, and they retain their flavor.

Q. 32. You have no difficulty in reading the name "P. Lorillard Co." on the cigarette package, whether covered with the glazed paper or not?

A. I would on this end here, but not on this end here.

292 This end here it is very plain; on the back it is very plain, ~~more~~ so than on the front.

Q. 33. But you can read the name?

A. Oh, yes, on the back; I would have difficulty on the front there.

Q. 34. What brand of the P. Lorillard Company do you handle in your store?

A. Let's see, Egyptian Deities,—we carry practically all the brands, all the fast sellers, and the Murads, we carry those, and Moguls, I think.

Q. 35. Did you ever know of the P. Lorillard Co., tobacco manufacturers, making or selling chewing gum,  
293 food products or beverages?

A. Never.

Q. 36. And did you ever know of the Beech-Nut gum people,—the Beech-Nut Packing Company, to manufacture and sell tobacco products?

A. Absolutely not.

Q. 37. State whether or not you have ever purchased or sold Beech-Nut cigarettes as the product of the Beech-Nut Packing Company,—the gum people?

A. No, never.

Q. 38. Whose product did you sell them as?

A. P. Lorillard Co.

294 Q. 39. State whether or not you ever knew of the Beech-Nut Packing Company, the gum people, to put out a package of goods like this Scrap tobacco which I show you, in appearance, style and the like?

A. No, I did not,—not in appearance or style.

Q. 40. Would you have any trouble in distinguishing a package of Beech-Nut cigarettes from a package of Beech-Nut gum?

A. No, I would not.

Q. 41. And if a customer came into your store and wanted a package of Beech-Nut chewing gum, and went away with a package of Beech-Nut cigarettes for the gum, what would you think of him?

A. I would think it was ridiculous, that he didn't know what he wanted; or if a man wanted "Beech-Nut" I think it would be a mistake of the salesman in not asking him what he wanted, whether he wanted gum or cigarettes. 295

Q. 42. You would not confuse the two?

A. If a customer came in and said, "Beech-Nut", I would say, "Beech-Nut cigarettes" because we are handling cigarettes; but if he wanted the gum, we have it in jars, and he can pick it right out of the jar.

Q. 43. As I understand, you regard them as a different class of goods?

Mr. Hinton: Objected to as leading. 296

A. Absolutely.

Q. 44. What is the reputation of P. Lorillard Co. in the tobacco business, so far as you know?

A. They are one of the largest concerns in the world, in the tobacco business,—in fact without a question I think the largest to my knowledge.

Q. 45. To what do you attribute the sales of the Beech-Nut cigarette in your store?

Mr. Hinton: Objected to as calling for a mere opinion of the witness. 297

A. To P. Lorillard's advertising, and the detail work they do on their items and products.

Q. 46. What kind of detail do you mean?

A. Advertising, posters on the windows, etc.,—missionary work, and sampling.

Q. 47. Would you attribute the sale of the Lorillard Beech-Nut cigarette in any manner to the fact that the Beech-Nut gum people are making gum?

Mr. Hinton: Objected to as calling for an opinion and conclusion of the witness.



298 A. No.

Q. 48 You regard them as entirely different lines of business?

A. I do; yes.

Mr. Cavanagh: I think that will be all, Mr. Cauto.

*Cross Examination.*

X-Q. 1. (By Mr. Hinton): Mr. Cauto, you are employed by the Liggett Company, and they run a great big drug store there on Tromont Street, isn't it?

299 X-Q. 2. And you are in charge of the tobacco counter?

A. I am.

X-Q. 3. You do the buying?

A. I do, in my department.

X-Q. 4. Yes; and you have sold the Beech-Nut cigarette we are talking about?

A. I have.

X-Q. 5. Do you sell gum on the same counter, is it displayed on the same counter with the cigarettes?

A. Yes, sir.

300 X-Q. 6. And you never sold Beech-Nut Scrap tobacco?

A. No, sir.

X-Q. 7. Don't know anything about that?

A. No.

X-Q. 8. Now, I wish you would think back, if you will, please, to a year or so ago, when you first put in Beech-Nut cigarettes, and tell me, if you can remember, whether a Lorillard agent or a jobber came around to you first and got you to take this stuff, or how you came to put them in?

A. Well, how I came to put them in, they were put on the list at our New York office; they went into the

976  
New York people, and we ordered from there. That is our rule. We order from our New York depot the cigarette, if the Liggett Company has condescended to put them in. 301

X-Q. 9. Did they give you some kind of authority to order so many of those cigarettes?

A. Yes; their merchandise is all standardized, and as soon as they are on the standard list, we can order them.

X-Q. 10. You knew who manufactured them, before you put them in, did you not?

A. Yes; that they were a Lorillard product.

X-Q. 11. Yes, you knew that before you ordered them, or put them in? 302

A. Certainly.

X-Q. 12. I just want to get the facts. I am going to make this as short as possible. You saw when you first picked up a package of the cigarettes,—you saw the Beech-Nut brand on it, and you thought they were not made by the Lorillard Company?

A. No.

Mr. Cavanagh: No, where did he say that?

Mr. Hinton: Read "Q. 28."

X-Q. 13. I am reading your answer to Q. 28 on the direct examination. The question is: 303

"Q. 28. As I understand, you were not yourself ever confused into believing that the cigarette was made by the same people who made the gum?"

A. Certainly not, because I order the different products for the department, and I have had charge of the department going on 9 years,—I have been there 11 years,—and when the product came out I picked up a package of Beech-Nut cigarettes and I naturally saw the Beech-Nut brand on the pack-

304 age, and I said to myself, that must be somebody besides P. Lorillard who is manufacturing them, but when I saw the name, "P. Lorillard," I saw who it was. I ordered them from the New York Department of L. K. Liggett & Company."

A. That is right. When a cigarette is new, I naturally looked to see who made it. That is proper.

X-Q. 14. And when you looked you saw what?

A. I saw "P. Lorillard Co." printed plainly on the front of the package, and on the carton.

305 X-Q. 15. Will you tell me during that moment, when you picked up the package of cigarettes and saw the Beech-Nut brand, and were in doubt about it,—who did you think might be the manufacturer?

A. Some cigarette company, because I knew that the gum people manufactured gum, and right away I used my head and said that they were not made by the gum people, but some cigarette people.

X-Q. 16. What suggested the gum people to you?

A. Because they carry gum, the Beech-Nut gum on the counter.

X-Q. 17. When you looked at the package of cigarettes, what did you think of, what gum company?

306 A. When the cigarettes were put in, I had them on the counter and, why, I thought of the Beech-Nut people. I had about 25 customers question that, and that was a natural question; not that they cared who made it, but they said this, "Made by the people who make the gum?" And I corrected them. I said, "The gum is made by the gum company, in Canajoharie, and Brooklyn, New York," and that is all. That adjusted the matter, when I told them that the gum and cigarettes were two different products.

X-Q. 18. And you always put them straight on that?

A. I put them straight, yes, because I wanted them

to be straight about it, being in the business, and I wanted to be straight, because it is instant dismissal for misrepresenting any of the goods. 307

X-Q. 19. Yes; but they are not all as strict as you people are in regard to that, are they?

A. No, I don't believe they are.

X-Q. 20. Now, every time anybody made any remark of that kind, you straightened them out?

A. I did.

X-Q. 21. Always?

A. Always.

X-Q. 22. And you say you can remember about 25 instances of that kind? 308

A. Of that kind, since they came out. Since then nobody has bothered about it. They come in and say, "Give me a package of Beech-Nut gum," or "Give me a package of "Beech-Nut cigarettes." I guess they know it is made by an entirely different company now.

Mr. Hinton: The last part of the answer is objected to as a mere opinion of the witness, and without the slightest foundation.

X-Q. 23. Now, you haven't had any further discussion with your customers about this thing, have you? 309

A. No, I have not.

X-Q. 24. Except those 25 instances that you remember?

A. Yes, just those 25.

X-Q. 25. If a man comes into your store and wants Camel cigarettes, he puts down the money and takes the goods and walks out, usually, doesn't he?

A. He does.

X-Q. 26. If you know him, he might stop and talk to you, but the ordinary customer would walk out after he got the cigarettes?

A. That is true.

310 X-Q. 27. And you can't tell by his face when he comes in, or the back of his head when he goes out, what he thinks about who makes the stuff?

A. No.

X-Q. 28. And the only possible way you could tell what he thinks is by what he might tell you?

A. That is it.

X-Q. 29. And it is very rare that he says anything about it?

311 A. Very rare. Outside of, as I say, when the product is new, the product when it comes out, the customer will naturally say, "Who makes it?" It is just the same with the Black & White cigar, or the Black and White Whiskey, or Battle Axe tobacco, or any new product made. We know that Scrap tobacco is manufactured by Lorillard Co.,—we don't handle it,—but I worked for Lorillard—that is, I worked for the American Tobacco Company before I worked for Liggett, and I know they had the Scrap tobacco on the market—

Mr. Hinton: Objected to as argumentative and not responsive, and volunteered.

312 X-Q. 30. You used to work for the Lorillard Company?

A. The American Tobacco Company before they divided.

X-Q. 31. How long have you been with Liggett now?

A. About 11 years.

X-Q. 32. Here in Boston?

A. Yes, sir; always in one store.

X-Q. 33. In one store?

A. Yes.

X-Q. 34. Have you a high regard for the Lorillard Company?

A. Yes, I have.

X-Q. 35. Your relations with the Lorillard Company 313  
have been such as to make you very friendly with them?

A. Not particularly. Everybody we do business  
with, we are friendly with,—we don't show any par-  
tiality.

X-Q. 36. Now, Mr. Cauto, you testified, I think, that  
if a person wanted a package of gum you would not  
hand him a package of cigarettes?

A. No, sir.

X-Q. 37. Did ever anybody come into your store,  
that you can remember and ask just for "Beech-Nut"?

A. Yes, sir.

X-Q. 38. Is that a common occurrence?

314

A. Not common, no,—one case in a thousand where  
they just say, "Beech-Nut."

X-Q. 39. What do you do in that case?

A. Give them a package of Beech-Nut cigarettes, be-  
cause I run the cigarette business.

X-Q. 40. You don't ask them what they want?

A. No, I give them the cigarettes, and if they have  
have objection to it they say, "I don't want that, I  
want the gum." But those are rare instances. I would  
say rare instances, one in a thousand, probably. When  
a man comes in he usually knows what he wants, and  
he will say, "Beech-Nut gum" or, "Beech-Nut cigar- 315  
ettes."

X-Q. 41. Now, you testified as to a certain conversa-  
tion you had with two people representing the Beech-  
Nut Packing Company in which you told them that  
some of your customers had thought the cigarettes were  
made by the Beech-Nut people, and you related that  
conversation. How long ago was that conversation,  
Mr. Cauto?

A. That was,—well, it was a few months after the  
cigarettes came out,—when the cigarettes were new on  
the market.

316 X-Q. 42. How many Beech-Nut people came in to see you, do you remember?

A. Two people came in to see me from the Beech-Nut Packing Company.

X-Q. 43. And would you recognise those people if you saw them?

A. I think I would; I am not positive that I would.

X-Q. 44. You don't know what they look like?

A. No; I knew they were from the Beech-Nut Packing Company.

X-Q. 45. They said they were?

A. Yes.

317 X-Q. 46. Now, you are sure that you would recognize those people if you saw them?

A. I am not positive, because I only saw them once.

X-Q. 47. Are you absolutely sure that you would remember the entire conversation, word for word?

A. Oh, yes, I remember the conversation.

X-Q. 48. Every bit of the conversation?

A. I remember all the conversation, yes.

X-Q. 49. After a year has elapsed you remember all the conversation?

318 A. Yes, I remember practically just everything I said. In fact they told me that I was one of the few that spoke the truth; that I wanted to deal fair with both sides and didn't want to show any partiality between them. I showed no partiality; I told them the truth, just as the facts were. They asked me if people asked if the cigarette was made by them, and I said, "Yes, they did; that there was a few people, a lot—(by a lot I meant 25 or 30 people)—although they didn't ask me how many,—“that thought the gum was made by the Packing Company people, and I told them that was not right.” As I said before, if I misrepresented the gum, as made by the Beech-Nut people, they might buy more, or cigarettes, under that misre-

presentation. I wanted to lead them on the right track and make them understand that the cigarette was made by the Lorillard Company. 319

Mr. Hinton (To the stenographer): Will you read the last answer of the witness?

(The last answer is read.)

X-Q. 50. Did you mean gum in that answer which you have just made?

A. Cigarette, that the cigarette was made by the Lorillard Company.

X-Q. 51. But you said if you misled them as to the gum, as made by the Beech-Nut people, they might buy more of them,—what did you mean? 320

A. My idea is that they would buy more of the cigarettes. My idea was to be very careful not to misrepresent the product to the customers, because the Beech-Nut gum people, we do a lot of business with them just the same as we do with the Lorillard Company, and I wanted to play fair with both. But I don't think the gum helps the cigarette; on the other hand, the detail work of the Lorillard Company, the detail work they are doing on their proudest helps sell the cigarettes. 321

Mr. Hinton: Objected to as not responsive.

Mr. Cavanagh: Mr. Hinton must take the answer as he finds it. It appears to be responsive to the question.

X-Q. 52. How many people make purchases at your counter every day?

A. Over a thousand.

X-Q. 53. And you said that with respect to the ordinary customer who buys the goods he takes it and



322 walks out,—you don't know what he thinks as to who makes the product?

A. No, sir.

X-Q. 54. You have no way of knowing at all?

A. No.

X-Q. 55. And any idea what you might think he thought would be your opinion?

A. That is all.

X-Q. 56. And you have been in the tobacco business a great many years, have you?

A. Yes.

323 X-Q. 57. Could you describe those two people who came in and talked to you?

A. Well, when they came in to me and I gave them what I thought—

X-Q. 58. Will you please answer the question. Can you describe the people,—can you describe them?

A. No, I can't describe them. They were strangers to me,—I can't describe them other than I know they were from the Beech-Nut Packing Company, the Beech-Nut gum people. I think one was a lawyer, I am not sure.

X-Q. 59. You don't know what he looks like?

A. No.

324

Mr. Hinton: That is all.

*Re-direct Examination.*

R-D Q. 49. (By Mr. Cavanagh): Will you state whether or not in your experience you ever sold a tobacco product, such as cigarettes, on the reputation of a food product manufacturer, or gum manufacturer?

A. Oh, no.

Mr. Cavanagh: That is all.

*Re-cross Examination.*

325

R-X Q. 60. (By Mr. Hinton): I understand you to mean that you never told anybody that any product was made by someone who did not make it?

A. That is it.

R-X Q. 61. You would not misrepresent it?

A. No.

R-X Q. 62. Even if you could sell more of it?

A. No, I would not.

Mr. Hinton: That is all.

*Re-direct Examination.*

326

R-D Q. 50. (By Mr. Cavanagh): Will you state whether or not you would try to sell, for example hats upon the reputation of a manufacturer of machinery, if you were in that line of business?

A. No.

Mr. Cavanagh: That is all.

Mr. Hinton: That is all.

Deposition closed.

Signature waived.

327

HARRY KLEIN, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. Please state your name, age, residence and occupation.

A. Harry Klein; 64 Allen Street, Boston, Mass.; age 28; at present cigar department manager for L. K. Liggett & Company, store 311, 375 Washington Street, Boston.

328 Q. 2. How long have you been with L. K. Liggett in this capacity?

A. In this particular store, for the last two years.

Q. 3. Before that where were you?

A. Before that I was for 11 months in the leather business in New Hampshire, and previous to that I was also employed by the L. K. Liggett Company, and also by Schulte & Company, New York.

Q. 4. They are cigar manufacturers and tobacco-nists?

A. Yes, sir; tobacco-nists.

329 Q. 5. As I understand it, you have for the last three years been located at the Liggett address you have given?

A. It is about three years. Pardon me, before I went to this store they closed the store that they had on Summer Street, I was department manager there, and I had to wait four weeks until they got a place, and then I went up here. Why I remember it is because of my vacation. When you are with them about a year you get one week's vacation, and when you are with them over a year, and up to two years and more, you get two week's vacation.

330 Q. 6. In this Liggett store where you are now, what kinds of goods do you sell, under your supervision?

A. Why, do you mean all kinds of goods? Tobacco, cigarettes, and razor blades and smokers' articles.

Q. 7. Do you sell any confections, chewing gum or the like?

A. No; I don't carry it on my counter. Some counters do, in the chain of stores.

Q. 8. Is this Liggett's store located in a business section or residential section?

A. Business section.

Q. 9. Approximately, how many customers do you serve a day there?

A. 500,—that is a general average. Saturdays it runs to 800. 331

Q. 10 I show you a package of Beech-Nut cigarettes, which are in this case as an exhibit. Did you ever sell any cigarettes like that?

A. Yes, sir.

Q. 11. I also show you a package of Beech-Nut Scrap tobacco, which is also an exhibit in this case. Do you sell that?

A. No, sir; but I have seen it and lived with a man who chewed it up in New Hampshire. I know that they make it.

Q. 12. Who, if you know, makes the Beech-Nut cigarette and the Beech-Nut Scrap tobacco? 332

A. P. Lorillard Co.

Q. 13. Do you know, of the Beech-Nut Packing Company or have you ever heard of them?

A. Yes, sir; I have heard of them. How I came to hear of them, when the candy clerk is out you have to go and wait on customers at that counter, and sell them gum; they ask for Beech-Nut gum, or Beech-Nut Mint, or cloves, which are all carried in the candy department.

Q. 14. Were you ever confused or under the impression that the Beech-Nut cigarette was made by the same people, or put out by the same people as put out the gum? 333

A. No, I was not. How I came to know it at first, we got a letter from the New York Office, what we call a circular letter, and it told us, or gave us authority to issue merchandise orders to representatives of P. Lorillard Co. for the purchase of cigarettes, Beech-Nut cigarettes, which was to back up an advertising campaign which was being held in our territory.

Q. 15. Who was conducting this advertising campaign, and what was being advertised?

334 A. P. Lorillard Co., to my knowledge, was conducting the campaign and they were advertising Beech-Nut cigarettes.

Q. 16. How long ago is that, about?

A. Well, it seems to me that it was about, pretty near a year ago.

Q. 17. As I understand it, you sell goods yourself across the counter, do you not, on certain occasions?

A. Always; I have charge of the cigar department there, that is my business.

335 Q. 18. Did you ever have any persons make any comments or remarks which would lead you to believe that they thought the Beech-Nut Packing Company, who make the Beech-Nut gum, were also manufacturers of the cigarette?

A. Not in the store.

Q. 19. You never had any customers who thought that?

Mr. Hinton: Objected to as entirely incompetent, leading and as calling for an opinion and conclusion of the witness.

A. Not one customer in the store.

336 Q. 20. Would you yourself be led into confusing a package of Beech-Nut cigarettes, or a package of this Beech-Nut Scrap tobacco with a package of Beech-Nut chewing gum?

A. No, because they are in different packings or cartons. When you pick up a carton of these cigarettes, or the Scrap tobacco, it is in an entirely different carton, or box from what the Beech-Nut gum would come in, or any kind of gum, for that matter, that I have ever seen.

Q. 21. How would the comparative appearance of the cigarette package and the Scrap tobacco package strike you in connection with the gum package?

A. It would not strike me as very similar, because one is red when you first glance at it, if you are not looking at anything central, and the other, it seems yellow, on the gum package particularly; but if you are handling the candy, the cloves they are brownish like, and the mint green. They don't seem to have any staple color for any of the Beech-Nut products. 337

Q. 22. You have never seen any package of the Beech-Nut Packing Company that resembles the package of Beech-Nut cigarettes

A. No.

Q. 23. And you have never seen any package of the Beech-Nut Packing Company that resembles the package of Beech-Nut Scrap tobacco? 338

A. No; we have never put the tobacco in the store.

Q. 24. Have you ever seen a package of these Beech-Nut cigarettes that didn't have the name of "P. Lorillard Co." on them, as shown on the sample package which I show you?

A. No.

Q. 25. Have you ever seen a package of Scrap tobacco that did not have the name, "Lorillard" on it?

A. No, I never have because I never handled it.

Q. 26. You note the name "Lorillard" on that package? 339

A. Yes, sir; when I picked it up. We don't carry it.

Q. 27. And "P. Lorillard Co." on the cigarettes?

A. Yes, sir.

Q. 28. What would that indicate to you as to the source of manufacture?

A. That P. Lorillard Co. was manufacturing both.

Q. 29. Did you ever hear of the Beech-Nut Packing Company making any cigarettes, or any tobacco product?

A. No; I never heard of them making any tobacco product. I understand that they put up such things as ham, in glass, and different products of that kind.

340 Q. 30. Food products, you mean?

A. Yes, food products.

Q. 31. Did you ever hear of the Lorillard Company putting out food products, or chewing gum?

A. No; all my time in the tobacco business I knew they were tobacco manufacturers, that they manufactured cigarettes and smoking tobacco and chewing tobacco.

Q. 32. State whether or not any customers ever asked you for any cigarette made by the Beech-Nut Packing Company?

341 A. Why, no, I never had anybody ask me for any cigarettes in particular.

Q. 33. What would be your opinion of a person who came into your store and wanted to buy a package of Beech-Nut gum, and walked out with a package of Beech-Nut cigarettes in the place of the gum?

342 A. Why, I would either think a man was one who ought to have been sent for observation, or taken under observation by somebody, or that he ought to have his eyes tested. So far as that is concerned, he would be a good fellow to do business with, because if he gave you a ten dollar bill, you could give him 50 cents in change, and he would probably walk out with it. There is never a person I have known—and I say I wait on 500 customers every day,—with the exception that I am out now and not waiting on them—who has asked me, or who has become confused between the Beech-Nut cigarette and the Beech-Nut chewing gum. When a man comes in and says, "Beech-Nut gum" or "Spearmint", I say, "On the candy counter," and if I look down there and the girl is not there, it is my work to go and get the nickel, or whatever money he wants to leave.

Q. 34. In your experience in the tobacco business, what is the reputation of P. Lorillard Co. as tobacco manufacturers?

A. It is now and has been of the highest; and in fact the men I have come in contact with, and I have come in contact with quite a few, have always represented what was advertised, and they never misrepresented any article; and if there was anything faulty with their product they were willing to make it good. 343

Q. 35. State whether or not you ever heard the Lorillard man, or any jobber, or dealer in these cigarettes represent them to be a part of the Beech-Nut Packing Company's product?

A. I never heard anyone state that.

Q. 36. Previous to your being called as a witness in this case, did anyone ever approach you relative to making a statement in connection with this litigation? 344

Mr. Hinton: Question objected to as entirely incompetent, immaterial and irrelevant; surely conversations between the witness and alleged Beech-Nut people are not admissible in this case.

A. Yes, sir; somebody, I don't remember who they were, two gentlemen who represented the Beech-Nut Packing Company, they came in and asked me about it. I didn't have to say anything,—in fact they did all the talking, and I kept quiet; they asked me if I would swear to something and I said I would not. 345

Q. 37. In a general way, what did they want you to testify to?

Mr. Hinton: Question objected to as entirely incompetent, immaterial and irrelevant; surely conversations between the witness and alleged Beech-Nut people are not admissible in this case.

A. They wanted me to testify that people were becoming confused between the two products, the Beech-Nut gum and the Beech-Nut cigarettes, and I knew my



346 own mind was clear about that, and I could not say it. As I stated before, we would say a man was crazy if he came in for a 5 cent package of Beech-Nut gum, which is a 5 cent article, if he was given a package of Beech-Nut cigarettes, we would say, "Hold on, that is 15 cents." Anybody could see he was wrong if he accepted it, but if he kept on running to get out we would be out 10 cents. So I couldn't see my way clear to swear to an affidavit, or something I didn't believe.

347 Mr. Hinton: Answer objected to as entirely incompetent, irrelevant, immaterial and as referring to a conversation between witness and other parties entirely inadmissible here, and as based on hearsay.

Q. 38. So you refused to testify for them?

A. I didn't refuse, or say I would. I kept quiet. You know how it is; sometimes you don't say yes and you don't say no.

Q. 39. Just what question did this Beech-Nut Packing Company man ask in connection with the cigarettes?

Mr. Hinton: Objection repeated.

348 A. He asked me if anybody became confused, or if they thought that the Beech-Nut Packing Company was making the cigarette.

Q. 40. What answer did you give him?

Mr. Hinton: Objection repeated.

A. I told him I couldn't see how that could be possible.

Q. 41. How long ago was this,—a little over a year ago?

A. I wouldn't say over a year ago; it was a month or two after the Beech-Nut cigarette had been advertised.

Q. 42. To what extent, to your knowledge, have the Beech-Nut cigarettes been advertised around here? 349

A. In the newspapers, sampling by the salesmen, and we also had authority to keep a poster on the window while the entire campaign was in progress in Boston, which lasted a little over a month, I believe.

Q. 43. So far as your experience goes, could you state whether or not Beech-Nut cigarettes were ever sold on the reputation of the Beech-Nut gum?

Mr. Hinton: Objected to as calling for the mere opinion of the witness.

A. No, sir; I don't think they ever were. 350

Q. 44. Would you think that the Lorillard Company, as a tobacco concern, and from your experience in the business, would have to sell their goods on the reputation of any food or gum concern?

Mr. Hinton: Same objection.

A. No, sir.

Q. 45. I call your attention to one of the packages of P. Lorillard Co. Beech-Nut cigarettes which is covered with tissue paper. Do you have any trouble in reading that name, "P. Lorillard Co." through that paper? 351

A. No.

Q. 46. Can you state whether or not, of your own knowledge, it is customary in the cigarette business to cover the packages with transparent paper?

A. Yes; they always cover them so that the cigarettes will be in proper condition when they reach the customer. I think it is a good custom to do so. Egyptian Deities or Murads,—in fact all of the high grade cigarettes, the Turkish cigarettes, are covered with wax paper to preserve the flavor in them.

Q. 47. Would you regard tobacco products, such as

352 cigarettes and Scrap tobaccos, the same or a different class of goods from food products, chewing gum, and the like?

A. I would regard it as a different class of goods entirely.

Mr. Cavanagh: I think that is all.

*Cross-Examination.*

X-Q. 1. (By Mr. Hinton.) You don't carry Beech-Nut Scrap tobacco in your store, do you, Mr. Klein?

A. No, we don't.

353 X-Q. 2. Now, you have been with the Liggett Company for about two years?

A. Where I am at the present time.

X-Q. 3. And how long altogether?

A. Well, on and off, about six years.

X-Q. 4. And prior to that were you with the Schulte Company?

A. For six months.

X-Q. 5. What were you doing before that?

A. I was with the Liggett Company.

X-Q. 6. Always in the tobacco department?

354 A. With the exception of once I was in the leather business for 11 months.

X-Q. 7. When was that?

A. That was right after I left Schulte, and up to the time I came back.

X-Q. 8. Schulte ran that big bunch of chain stores in New York, and different places?

A. Yes, sir.

X-Q. 9. Tobacco stores only?

A. That is all they ran, was tobacco stores and smokers' articles.

X-Q. 10. Now, before you put in these Beech-Nut cigarettes, I understand you got some kind of an ad-

vance notice from headquarters that they were coming out? 355

A. We did.

X-Q. 11. With authorization that you order those cigarettes?

A. To back up their advertising campaign. That is, so far as I can remember the letter read in that way, authorizing us to issue merchandise orders.

X-Q. 12. You haven't any recollection what the letter stated, but it was to that general effect?

A. Yes.

X-Q. 13. You knew the Beech-Nut cigarette was made by the Lorillard Company? 356

A. Yes, sir, because it said if representatives of the Lorillard Company, if they came, to issue orders to them.

X-Q. 14. And you had not up to that time seen the cigarettes, but you knew in advance who made them?

A. No, I hadn't seen them, but I knew in advance that it was coming.

X-Q. 15. And who made it?

A. Yes, P. Lorillard Co.

X-Q. 16. And you can't remember that you ever had any of your customers make any inquiries about the manufacturer of the cigarettes?

A. No. 357

X-Q. 17. They just came in and asked for Beech Nut cigarettes, and walked out with the goods?

A. That is all.

X-Q. 18. The same as they do with Camel cigarettes?

A. Yes, that is all they done was to ask for Beech-Nut. When they first came out they were 15 cents, and when they were reduced to two for a quarter, why, of course their sales increased.

X-Q. 19. Did they ever come in and ask for just "Beech-Nuts"?

A. Yes, occasionally a man would come in and say "Beech-Nut," and lay down 15 cents.

358 X-Q. 20. Do you carry Beech-Nut gum on your counter?

A. Not on my counter.

X-Q. 21. So if he comes to your counter, you know he wants cigarettes?

A. Yes.

X-Q. 22. And you don't carry scrap tobacco in the store?

A. No, sir.

X-Q. 23. Now, in answer to one of the questions, Q. 21 when you were asked about the comparison between the gum package and the scrap tobacco package and the

359 cigarette, you said:

"It would not strike me as very similar, because one is red when you first look at it, if you are not looking at anything central, and the other it seems yellow, on the gum package particularly; but if you are handling the candy, the cloves they are brownish like, and the mint green. They don't seem to have any special color for any of the Beech-Nut products.

What did you mean by that expression "if you are not looking at anything central?"

360 A. What I meant by that was this: This package of Beech-Nut tobacco, that has got red on it; although the Beech-Nut cigarettes have red on them. That is their main color, you see. While on the Beech-Nut gum, if you pick it up, it is yellow, which is true, and if you pick up a package of cloves, that is another color, and also the mints. The lime tablets are also green. I spoke of eye sight, when I had to go from the tobacco counter to wait on someone at the candy counter--

X-Q. 24. All I am concerned is the expression "if you are not looking at anything central". What did you mean by that expression in your answer?

996

A. Why, from what the gentleman here asked me— 361  
he asked me if I would get confused, and I said not at  
all, nothing would confuse me, because there was no  
similarity that I could see.

X-Q. 25. What did you mean by the expression "if  
you are not looking at anything central", in your  
answer?

A. Well, before a customer came in you might be  
looking at anything at all, and when he comes in your  
attention is on him, to get just what he wants as quick  
as you can get it to him. I don't remember that I used  
the word "central." Did I?

Mr. Cavanagh: I don't remember. It is in the 362  
answer.

X-Q. 26. You were talking about these packages and  
you were asked (Q. 21) "How would the comparative  
appearance of the cigarette package and the scrap  
tobacco package strike you in connection with the gum  
package?" And you said, "It would not strike me  
as very similar, because one is red when you first glance  
at it, if you are not looking at anything central," all  
I want to get at is what you mean by "if you are not  
looking at anything central?"

A. Well, as I said a moment ago, just before some- 363  
one might come in you would have nothing on your mind,  
and when the man comes in and says, "Beech-Nut cig-  
arettes," or he might ask for Murads, or Dieties, and  
then your mind is concentrated on what he is asking for,  
and you look for it.

X-Q. 27. Didn't you have reference to the back-  
ground on the package—

Mr. Cavanagh: Objected to. The witness is just  
answering the question, what he had reference to.

364 X-Q. 27. (Continued) —and the cigarette package is red and white, and the Beech-Nut gum might be yellow, and different colors on other products, isn't that it?

A. Yes, sir.

X-Q. 28. That is what you had in mind?

A. Yes.

X-Q. 29. As distinct from the central devices?

Mr. Cavanagh: The witness made no reference to central devices on packages; he explained what he meant by the expression, "if you were not looking at anything central".

365 Mr. Hinton: I object to this constant interference with the cross-examination.

Mr. Cavanagh: This is not interference with the cross-examination, but, as a matter of law of evidence the witness has already answered the question as to what he meant by the word "central," that his mind was not concentrated until the customer came to him.

Mr. Hinton: The record speaks for itself. Now, continuing the testimony, if I may.

366 X-Q. 30. You said that you had in mind the background of the package of the cigarette, which is red, and the scrap tobacco, which is red and white, while on the Beech-Nut Packing Company products, you mentioned that it might be yellow or any other color?

A. Yellow, and the different colors I have mentioned on the different products.

X-Q. 31. You are talking about the background as distinguished from the central device on the package?

A. Yes.

Mr. Cavanagh: The witness has already answered what he meant by the word "central," and that he

was not speaking about any central figure on the package itself. 367

Mr. Hinton: The interference of Mr. Cavanagh is entirely improper.

X-Q. 32. Now, in the ordinary course, Mr. Klein, if a man comes in to your store and wants a package of Camel cigarettes, he asks for Camels, and puts his money on the counter and walks out and he doesn't tell you anything about what he thinks about who makes the Camels; is that the fact?

A. Why, that is true.

X-Q. 33. And the same thing with the Fatima cigarette, or the Lucky Strike, or anything else? 368

A. Yes.

X-Q. 34. They come in and ask for what they want, and put their money down, and then walk out?

A. Why, that is the general course.

X-Q. 35. And you can't tell by looking at a customer's face when he walks in the store or the back of his head when he walks out what he thinks about who makes the product he is buying?

A. Why, not unless he tells you what he thinks.

X-Q. 36. Perhaps you don't understand. A customer comes in, and wants Camel cigarettes, and asks for Camel cigarettes. You can't tell by looking at his face when he walks up to you, or at the back of his head when he walks away, anything about what his idea is as to who makes the Camel cigarettes,—do you understand that? 369

A. You want to know if when a man comes in and says, "Give me Camel cigarettes", what he is thinking about, with reference to who makes Camel cigarettes?

X-Q. 37. Yes.

A. The only thing I could tell you, if he likes Camel cigarettes that is why he is buying them.



370 X-Q. 38. And except that you have been told by some customer, you would not know who he thought made any product that he was buying?

A. Why, he wouldn't know unless he looked at the package, because practically every manufacturer puts his name right on the package. It would not be necessary for him to ask the clerk whom he was buying it from.

X-Q. 39. Do you know what is written on a package of Camel cigarettes under the picture of the camel?

A. R. J. Reynolds.

X-Q. 40. And that is on the front of the package?

A. What do you mean, where it is on the package?

371 X-Q. 41. On the front of a package of Camel cigarettes, underneath the picture of the camel, do you know what is written there?

A. Well, there is camel in the middle, isn't there? Where do you mean on the package?

X-Q. 42. Below the picture of the camel?

A. R. J. Reynolds.

X-Q. 43. And what is written on a package of Lucky Strike cigarettes underneath the red panel containing "Lucky Strike"?

A. American Tobacco Company.

372 X-Q. 44. That is on the front, on the bottom of the package?

A. It is.

X-Q. 45. I show you a package of Camel cigarettes, and you see that you are wrong in your answer to that question; you see that the name of "R. J. Reynolds" does not appear under the picture of the camel, do you not?

A. Well, I was of the opinion that it was. Let me see the package a minute. (Witness examines package of Camel cigarettes).

X-Q. 46. Now, thinking again about a package of Lucky Strike cigarettes, you are not at all sure now

that the name "American Tobacco Co." appears under the red panel with the name, are you? 373

A. I will bet you a straw hat that the name, "American Tobacco Co." is on the package.

X-Q. 47. It is somewhere, but about the position, near the bottom, you can't say with certainty that the name "American Tobacco Co." is there, can you?

A. No.

X-Q. 48. As a matter of fact, it is not, if you will take my word for it. Now the reason you thought the name "American Tobacco Co." was on the Lucky Strike package, and the name "R. J. Reynolds" was on the Camel cigarette package, was because you knew that those concerns were making those products? 374

A. Yes.

X-Q. 49. That is the reason you would expect to find it, that you know that those concerns were manufacturing those cigarettes, and that you would find the name on the package somewhere?

A. Yes.

X-Q. 50. Now, you have said that two people from the Beech-Nut Packing Company came to see you. How long ago was that?

A. Oh, well,—it must have been a little over a year ago, or more, I believe. 375

X-Q. 51. And you didn't say much to them one way or the other about it?

A. I didn't, no.

X-Q. 52. You didn't commit yourself?

A. No, I didn't.

X-Q. 53. And you told them that you hadn't heard any remarks or comments from your customers about the question of who makes the Beech-Nut cigarettes?

A. Well, I told them that no customers I had had, had asked me anything,—about who the different manufacturers were,—whether the Beech-Nut Company was making the cigarette.

376 X-Q. 54. That was the extent of the information that you gave them at that time?

A. Yes, that is right.

X-Q. 55. Did you previously tell a man who came into your store that you thought the Beech-Nut cigarettes were selling at the beginning because they had the name "Beech-Nut" on them?

A. No, sir.

X-Q. 56. You don't remember that?

A. No, sir.

377 X-Q. 57. With respect to this visit of these two people you are talking about now, you merely said that you hadn't had any cases of comments or remarks or inquiries from your customers?

A. That is just what I told them.

X-Q. 58. And did you tell them that nobody would take a package of gum in the place of a package of cigarettes?

A. They didn't ask me that question, so I had no occasion to tell them.

X-Q. 59. You say here, when you were asked what these people wanted you to testify,—in answer to question 37 in your direct examination:

378 "They wanted me to testify that people were becoming confused between the two products, the Beech-Nut gum and the Beech-Nut cigarettes, and I know my own mind was clear about that, and I could not say it. As I stated before we would say a man was crazy if he came in for a 5 cent package of Beech-Nut gum, which is a 5 cent article, if he was given a package of Beech-Nut cigarettes, we would say, "Hold on, that is 15 cents." Anybody could see he was wrong if he accepted it, but if he kept on running to get out we would be out 10 cents. So I couldn't see my way clear to swear to an affidavit, or something I didn't believe."

Now, in that part of your direct examination you were talking about confusing a package of cigarettes with a package of gum? 379

A. Why, yes.

X-Q. 60. And then you also said in that answer that the people who came in wanted you to testify, "that people were becoming confused between the two products." But you have just said that they did not ask you that question.

A. They did want me to testify.

X-Q. 61. They did, or did not?

A. They asked me if I would swear to something, and I said no. 380

X-Q. 62. What was it they wanted you to swear to?

A. That people were becoming confused between the two packages.

X-Q. 63. You just said two or three minutes ago you didn't say so.

A. What didn't I say?

Mr. Hinton (To the stenographer.) Will you turn back and read his testimony on that.

(The last seven questions and answers are read by the stenographer.)

X-Q. 64. In other words, if I understand this record which we have just had read to us, you say in your direct testimony that they wanted you to testify to a confusion between the two packages, and now, as well as you can recollect, you say that they did not ask you that particular question. 381

A. I said they did.

X-Q. 65. Didn't you just say they did not?

Mr. Cavanagh: He didn't say any such thing. You must read the record straight. Now, I will

382 ask the stenographer to go back and read the testimony again.

(The testimony is again read.)

The Witness: They did ask me.

X-Q. 66. They did ask you that question?

A. Why, sure, they asked me that question. Now, let me say something: When two men are talking to you and you are at the counter and they are talking to you, you can surmise from their talk to you just what they have in mind. If you say to me from their remarks, did they want you to testify, my answer is yes.

383 X-Q. 67. You don't remember the language that they used? A. No, I don't.

X-Q. 68. You could not positively remember very definitely after a year what they said?

A. No, I can't remember definitely, but I am telling you that that is what they were really after.

X-Q. 69. That is what you thought they were after?

A. Yes.

X-Q. 70. That is what you made up your mind they were after, but you can't quote their words?

A. No, I can't quote their words, but that is what I made up my mind they were after.

384 X-Q. 71. That is what you understood they were after?

A. Yes.

Mr. Hinton: In view of the statement of the witness, the objection to question 36, 37, 38, 39, 40, 41, in the direct examination, is emphatically repeated.

X-Q. 72. Now, going back to the time when the Beech-Nut cigarettes first came out, and you put them in, Mr. Klein, did they go pretty well from the beginning, do you remember?

A. Why, for a new brand they took hold fairly well.

X-Q. 73. Did you make any special effort to push them? 385

A. No, sir.

X-Q. 74. Did you ever tell anybody that the word "Beech-Nut" was a good name and would sell the cigarette, that you remember?

A. No, sir.

X-Q. 75. You don't remember having said that?

A. No, sir.

X-Q. 76. Did you make any special effort at the time the Beech-Nut cigarettes first came out to make a note of, or remember any conversation that you may have heard over the counter about them?

386

A. No, sir.

X-Q. 77. You didn't try to remember anything that may have been said?

A. No, sir.

X-Q. 78. Waiting on hundreds of customers a day, you could not possibly remember any incidental conversation that may have occurred a year ago?

A. Why, I could remember it if it was something which would be out of the ordinary routine.

X-Q. 79. But I mean the ordinary discussion with customers?

A. No.

387

X-Q. 80. You would not remember it, and there was no reason why you should make a note of it?

A. No.

X-Q. 81. And there may have been some remarks at that time that you have forgotten; it is possible, isn't it?

A. No, I don't think there were any remarks with reference to Beech-Nut gum or Beech-Nut cigarettes that I would forget so easily, because I don't handle the gum on my counter.

X-Q. 82. But you don't just happen to remember any such remarks?

388

A. No; I never had a customer get confused on my counter between the two products.

X-Q. 83. They knew the difference between the gum and cigarettes?

A. They did, those I waited on.

Mr. Hinton: That is all.

*Redirect Examination.*

389

R-D Q. 48. (By Mr. Cavanagh.) Will you state whether or not if customers have come to your counter and made inquiries as to whether the cigarette was made by the same people as made the gum that you would have remembered the fact of such inquiries?

Mr. Hinton: Objected to as calling for a conclusion of the witness.

A. Yes.

390

R-D Q. 49. In your cross-examination you were asked about some central figures on the scrap tobacco and cigarette package and the gum package. Will you state whether or not you can distinguish between the central figures on the scrap tobacco and cigarette packages, and the central figure on the gum package?

A. You mean those two (indicating a package of Beech-Nut cigarettes and a package of Beech-Nut chewing gum)?

R-D Q. 50. Yes.

A. Why, yes.

R-D Q. 51. You had no difficulty in that respect?

Mr. Hinton: Objected to as grossly leading.

A. No.

Mr. Cavanagh: That is all.

*Re-cross examination.*

391

R-X. Q. 84. (By Mr. Hinton.) All three of those central devices are oval, are they not,—oval like an egg?

A. Yes.

R-X. Q. 85. And all three have the name, "Beech-Nut" around the top part of the oval, generally?

A. Well, one has "Beech-Nut" and the other has "Beech-Nut Brand" for the first letters over it.

R-X. Q. 86. How about the inside of the line of the oval, the Beech-Nut?

A. That also has Beech-Nut underneath

R-X. Q. 87. Do you see any similarity between those central devices? 392

A. No, sir, I do not.

R-X. Q. 88. Absolutely conspicuously different?

A. They are, sir.

R-X. Q. 89. Nothing alike about them at all?

A. Not that I can see.

R-X. Q. 90. No similarity at all?

A. No, sir.

R-X. Q. 91. Just as different as the Camel is from the Lucky Strike?

A. Yes.

Mr. Hinton: That is all.

393

*Re-direct Examination.*

R-D Q. 52. (By Mr. Cavanagh.) Taking those central devices as a whole, in the comparison of the cigarettes or the Beech-Nut Scrap tobacco with the Beech-Nut Packing Company's mark, would you have any difficulty in distinguishing those two, one from the other?

A. What is that?

R-. Q. 53. Would you have any difficulty in distin-



394 guishing that central device from that central device (referring to a package of cigarettes, a package of scrap tobacco, and a package of Beech-Nut chewing gum?)

A. No, I would not.

Mr. Cavanagh: That is all.

Mr. Hinton: That is all.

Deposition closed.

Signature waived.

395

Room 401, 53 State Street, Boston, Mass.,

August 9, 1922.

The taking of testimony resumed at 10.30 A. M.  
Present, as before.

BENJAMIN HURVITZ, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

396 Q.1. Please state your name, age, residence and occupation?

A. My name is Benjamin Hurvitz; my age is 29; residence 29 Calder Street, Dorchester, Mass.; occupation, in the tobacco business now. If you want my profession why, that is different. I don't know how long I will be in it.

Q.2. Are you in business for yourself,

A. No, I represent Mr. Solomon Hurvitz; that is. I am his manager.

Q.3. Is he a relative of yours?

A. My brother.

Q.4. How long have you been in the tobacco business?

A. Oh, this is counting. Well, steadily, I have been in it for the last four years, but on and off,—that is, with my father,—and previously I have seen the tobacco business, and been in it to some extent, for 20 years. 397

Q. 5. Where is the store located where you work?

A. 42—44 Salem Street, Boston.

Q. 6. Is this in a business section or a residential section?

A. It is business; there are a few residences, but they are practically gone; it is in the market section,—in fact it is in the tobacco section there.

Q. 7. How many customers a day do you serve down there?

A. Oh, during week days we serve about a thousand, or eleven hundred, and Saturday we serve, Oh, as high as twenty-two or twenty-three hundred. That is, upon an average, about fifteen hundred customers. 398

Q. 8. What kind of goods do you sell besides tobacco?

A. We sell strictly tobacco,—we handle practically no pipes,—and of course we sell gum. Gum is our only—well, gum, and at the present time there are life savers, that stuff—it is our only side issue.

Q. 9. Do you sell Beech-Nut cigarettes and Beech-Nut scrap tobacco, like these packages which I show you?

A. We sell them both. 399

Q. 10. Do you sell the Beech-Nut gum, like this box, in packages like these, which I show you?

A. Yes, sir; we sell that too.

Q. 11. Whose product, if you know, are the Beech-Nut-cigarettes and the Beech-Nut scrap tobacco?

A. The cigarettes and scrap tobacco are products of P. Lorillard Co.

Q. 12. Whose product is the chewing gum?

A. The Beech-Nut Packing people, with that queer name, the city they belong to.

400 Q. 13. How long have you known the P. Lorillard Co.?

A. Oh, ever since I have known the tobacco business; that is, nearly 20 years, since the days of my memory of it, I guess.

Q. 14. So far as you know, what is the reputation of P. Lorillard Co. in the tobacco business?

A. I wish I possessed the same—an admirable one.

Q. 15. Were you ever under the impression that either the Beech-Nut cigarettes or the Beech-Nut Scrap tobacco, like the packages you have examined, were put out by the same people that put out the Beech-Nut chewing gum?

401

A. Never; never was under that impression.

Q. 16. State whether or not you ever had any inquiries or heard any comments from customers or others that would lead you to believe that they were under such an impression?

A. Well, really, in the handling of cigarettes and gum,—or cigarettes, rather, from the time of its inception, and the gum at pretty nearly the same time,—and of course that is almost a year and a half now; and the inquiries whether Beech-Nut cigarettes and the Beech-Nut gum were made by the same company haven't been

402

over two or three,—they have been by retail consumers only.

Q. 17. And what did you tell the retail consumers when they asked this question?

A. Well, the way we put it to the retail consumer, wanting to make the sale of Beech-Nut cigarettes, to make our allotment, we emphatically told them that they were made by the people who made the Helmars, Trophies, Moguls, Murads, and so forth, which were made by the Lorillard Company.

Q. 18. These are well-known brands of cigarettes, are they that you have mentioned?

A. Yes; these are well-known brands.

403

Q. 19. State whether or not you have sold either the Beech-Nut cigarette, or the Beech-Nut Scrap tobacco, as the product of the same people who make the Beech-Nut gum?

A. Never sold them as made by the same company. The cigarettes and tobacco are made by an entirely different company.

Q. 20. And you regard tobacco as entirely different from gum and food products?

A. Always. In fact gum has only been handled by us for the last year and a half.

Q. 21. State whether or not you ever saw a package of Beech-Nut cigarettes that did not bear the name of "P. Lorillard Co." on it? 404

A. No; they all bear the name "P. Lorillard Co."

Q. 22. And did you ever see a package of Scrap tobacco that did not bear the name "Lorillard's" on it?

A. The same answer applies to the tobacco.

Q. 23. Did you ever know the Beech-Nut Packing Company to put out any tobacco products?

A. No; if they had put out tobacco products we would have been interested to buy their product.

Mr. Hinton: What is that?

405

The Witness: If we did know they put out tobacco products we would buy their tobacco products direct. But, so far as I know, they don't put it out.

Q. 24. Did you ever know the P. Lorillard Co. to put out any food products?

A. No.

Q. 25. Or gum?

A. No; They never put out gum.

Q. 26. So far as you know, to what extent has the Beech-Nut cigarette and the Beech-Nut scrap tobacco of P. Lorillard Co. been advertised in this Boston section?

406 A. Oh, they have been very greatly advertised. In fact they have been advertised so as to enable us to sell them in considerable quantities.

Q. 27. Did you ever have any customer come into your store and want to buy some Beech-Nut gum, and did you sell him some Beech-Nut scrap tobacco, or Beech-Nut cigarettes, in the place of the gum?

A. Why, the only way we do it at the store, when a man said "Beech-Nut" if he wanted cigarettes, he would say Beech-Nut cigarettes; and if he said "Beech-Nut" we would always take it for granted that he meant cigarettes. If he specified gum, we would give him gum.

407 We gave him what he asked for.

Q. 28. But you did not confuse the two?

A. Not in the wholesale trade, but in the retail trade, there is a "fire back", you know. They ask for gum—for instance they want Beech-Nut gum and they ask for "Beech-Nut", sometimes, without really specifying. But the confusion is really negligible; we have really no trouble about that.

Q. 29. What I meant is this: If a person came to your store and wanted to buy a box of Beech-Nut chewing gum, and asked you for that article—

A. (Interrupting) He would positively get it.

408 Q. 30. You would not give him Beech-Nut cigarettes?

A. Positively not.

Q. 31. Or Beech-Nut Scrap tobacco?

A. No.

Q. 32. Can you state from your experience whether or not it is the practice to wrap a package of cigarettes in transparent paper, like this package of Beech-Nut cigarettes before you?

A. The practice, well it is not universal, but it is becoming universal, on what we call the cup or oval packages.

Q. 33. Then you know that it is the practice to wrap certain packages of cigarettes with glazed tissue paper?

A. It is the practice, positively; to what extent,— 409  
I am just merely qualifying,— to what extent, I can't  
say, that is all.

Q. 34. Do you have any difficulty in reading the  
name "P. Lorillard Co." on this package of cigarettes  
which I show you?

A. No, not at all; there is no difficulty in reading it.

Q. 35. Would you have any difficulty in distinguishing  
between a package of cigarettes, or a package of scrap  
tobacco, and a package of gum, or a box?

A. No; the real background colors on both of them  
are almost entirely opposite, one is red and the other  
is yellow, or light brown. 410

Q. 36. You are referring to the Beech-Nut gum,  
or the Beech-Nut cigarettes?

A. The Beech-Nut gum has a yellow background, and  
the Beech-Nut cigarettes a red background.

Mr. Cavanagh: I think that is about all.

*Cross Examination.*

X-Q. 1. (By Mr. Hinton.) How many people wait on  
the counter in the store in which you are employed, Mr  
Hurvitz?

A. Well, those steadily employed there,—three of us, 411

X-Q. 2. Three of you who are working at the same  
time, or do you relieve each other?

A. Yes, we are in at the same time, because our store  
is kept on practically regular hours.

X-Q. 3. That means that you always have three  
clerks working there?

A. No; of course in the evening one is let off.

X-Q. 4. And there are two there then?

A. There are two right straight through the day  
time.

412 X-Q. 5. And on week days you wait on about a thousand customers?

A. A thousand customers week days; that includes wholesale and retail.

X-Q. 6. That is, you are expected to make about 500 sales a day yourself?

A. Yes, sir; about 400 or 500. Of course Saturdays we have a bigger trade. I am taking only the week day trade now.

X-Q. 7. What would be the Saturday trade?

A. The Saturday trade is from twenty-two to twenty-three hundred.

413 X-Q. 8. So that Saturdays you would wait on seven or eight or nine hundred?

A. We have extra help on Saturdays.

X-Q. 9. Yes. This is a pretty busy place.

A. We have two extra helpers on Saturdays.

X-Q. 10. Now, when you say that you have had only about two or three inquiries in respect to the question of whether or not the Beech-Nut people make the Beech-Nut cigarettes, of course you mean that you can remember?

414 A. Oh, yes I meant—I can't account for a year and a half, but, as I say, it was only at the beginning that we had two or three calls, and after that there was no question at all.

X-Q. 11. That is, so far as you can remember there was not?

A. That is as far as I can remember. You know that it is impossible to remember, because we are handling such a large number of customers a day, and it is a difficult thing to remember specifically.

X-Q. 12. You don't make it a practice, and there is no reason why you should have paid any particular attention to that when the cigarette first came out?

A. No; there was no need of it.

X-Q. 13. Now, I suppose in the ordinary practice a customer walks into your store and asks for what he wants, and put down his money, and takes the goods and walks out, and there is very little conversation between you and the customer? 415

A. There is very little, except perhaps at the time when we desire to push cigarettes, we desire to give a display, and we specialize sometimes for the company. That is, we give a favor for a favor, because it is the practice to do so; but in the ordinary run of business we give the customer what he asks for.

X-Q. 14. If a man comes into your store and asks for Camel cigarettes, you would naturally give him Camel cigarettes, and he walks out, and if he talks at all, it would be about base ball, or about some of the topics of the day, and not about who makes Camel cigarettes? 416

A. Yes, the business man would, but if he is a friend or some relative, or some family relation, we would probably talk about something else.

X-Q. 15. It would not be an ordinary incident if you discussed with a man who made the Camel cigarettes, or anything of the kind, would it?

A. No, it is not.

X-Q. 16. By the way, what is the printing on a package of Camel cigarettes underneath the picture of the Camel; do you know? 417

A. Why, I have not taken particular pains to notice it on any cigarettes because when I pick up a package of cigarettes and am asked what is printed on it, I read it off and tell the man,—when a man is asking who makes the Beech-Nut cigarettes, I could tell him without looking, or Beech-Nut gum, but when you ask what is on any particular package it is difficult to remember.

X-Q. 17. You haven't noticed?



418 A. I haven't noticed in the ordinary small run, but asked to do a thing, it would be very easy to notice it.

X-Q. 18. In other words, if you are asked to look at a package of cigarettes to see what is printed on it, you would of course be able to look at it and tell what was on it, but aside from that you would not notice particularly?

A. Yes; but if you ask me what I do know, or what I notice, that is different. I know that practically all the companies print their names on the packages, particularly cigarettes. If you asked me to give those, referring to particular cigarettes, I could not say, but  
419 I know that all do put their names somewhere on the package. You see there is a point there, on which way you ask your question.

X-Q. 19. Yes. Could you tell me offhand what is printed on the face of a package of Lucky Strike cigarettes, underneath the red panel?

A. Why, yes; on the Lucky Strike, the "American Tobacco Company" is on there. I remember about them. I don't remember about the Camels, but I will say that it is so used, because I know that the tobacco company is particular to get their name somewhere on the package in front.

420 X-Q. 20. On the front of the package underneath the red panel, you remember seeing that the "American Tobacco Co." is printed there?

A. I wouldn't say specifically in front of the package but I do know they print it on Lucky Strike to some extent,—and I know they have a label on the package, like stamping cigars, and the law applying to it; but on cigarettes I couldn't state specifically whether they all really do put it in front.

X-Q. 21. How many packages of Lucky Strike cigarettes do you suppose you have handed out over the counter? Of course you could not say within ten thousand.

A. I could give you a good estimate, very easily. 421  
Well, I should judge that we handle over the counter—  
you mean in single packages or cartons?

X-Q. 22. I am talking about the retail packages.

A. The retail packages,—we handle, I should judge,  
well—I should judge that we handle about 500 packages  
a day.

X-Q. 23. Now, you have been in the tobacco business  
for about four years?

A. That is steadily for four years now. I have been  
in the tobacco business a good number of years more  
than that; but if you ask me if that is my vocation, I  
would say yes, for the last four years. But I have been 422  
doing a tobacco business in off hours and vacation times  
longer than that, but most of my time has been spent  
in my profession.

X-Q. 24. You sell in your store a very small quantity  
of gum, relatively, and you don't feature your gum  
particularly?

A. No, we don't feature gum. We carry gum, because  
tobacco men who come in, simply demand it, and we  
carry it as an accommodation.

X-Q. 25. They expect to find gum for sale?

A. They expect to find gum, because we have to  
accommodate them, but we don't feature it in our 423  
business. Our business is tobacco.

X-Q. 26. Now, in regard to this business of the name  
on the retail package, if I understand you, you would  
not immediately notice and remember what is printed  
on a package of cigarettes, unless you were asked to  
look for it?

A. No, of course not. I have too many brands to  
look at,—too many brands to see.

X-Q. 27. Now, about these Mogul cigarettes and  
Murads,—and did you say Egyptian Dieties?

424 A. Yes, Dieties,—they are all included. I probably missed one or two of the brands, naming them offhand.

X-Q. 28. And in these one or two cases that you were asked about the manufacturer of Beech-Nut cigarettes, you told the people that they were made by the same crowd that made the Moguls and Murads?

A. Yes.

X-Q. 29. What manufacturer's name is featured on the Moguls and Murads and Dieties; do you know?

A. Why, I have never taken particular notice, as I say, of any particular case, but when you ask me to specify a case like the Beech-Nut cigarette, I know that

425 P. Lorillard Co. manufacture them. If you take one particular case I might be able to tell you; but if you are taking it offhand in a number of instances,—for instance, like the Camel, and I happen to notice it on the Camel, I could say whose name is printed on it, but if I didn't notice, I couldn't say. Of course I know who makes it, but I couldn't say whose name is on there; but in the case in question I happen to know that Lorillard's name is printed on Beech-Nut cigarettes and on the packages of Scrap tobacco. But I have not taken notice on either Helmars, or some of the other brands, but I do know it is not on the front of Helmars.

426 X-Q. 30. It is not on the front of Helmars?

A. No, I think not.

X-Q. 31. Now, how about the Egyptian Dieties and Murads and Moguls? What manufacturer's name is featured on those packages; do you know?

A. I don't think, so far as I remember, the name is featured on the front of the package.

X-Q. 32. There isn't any manufacturer's name featured on the front of the package?

A. No, not on the front. In the case of the high grade Turkish cigarettes you speak of, I think they are featured on the inside.

X-Q. 33. On the inside?

427

A. I think they are.

X-Q. 34. You must have sold a great many packages of Egyptian Dieties and Moguls??

A. Not so many Egyptian Dieties, but Moguls and Murads I have.

X-Q. 35. And you don't know whether there is any manufacturer's name featured on the front of those packages?

A. No, I don't think the manufacturer's name is featured on high grade cigarettes, not the name of the manufacturer.

X-Q. 36. You don't think it is?

428

A. I know they are featured, but I don't recall that they are featured on the front, I don't think they are. I know they are featured somewhere, but I think it is inside.

X-Q. 37. In what way is it featured on these brands?

A. The way it is featured, I think the original manufacturer's name is featured, and then the successor.

X-Q. 38. What is the original name?

A. I don't know how you pronounce it, S. Anargyros. In fact we receive their bills as "P. Lorillard Co. Successor to S. Anargyros", in the case of Turkish cigarettes. Whereas on the Beech-Nut cigarettes and Scrap tobacco, we get the original P. Lorillard Co. bill.

429

X-Q. 39. And that is where you get your definite knowledge as to who makes them?

A. That is, as to the original maker,—and I don't say they are the original makers of Beech-Nut cigarettes, or Scrap, but our knowledge comes from the face of the bill, the maker of the cigarette, as I say,—The Turkish cigarettes, as I say, are somewhat different.

X-Q. 40. Well, then, if I understand your statement, except from the fact that you told these customers who inquired about it, they would have had very little

430 opportunity to find out or know whether it was the Lorillard Company who made the Egyptian Dieties and the Moguls and Murads or not, no manufacturer's name being featured on that package; is that the case?

A. Why, just make that a little plainer, will you, please?

X-Q. 41. All I mean is that Anargyros' name is featured, as I understand you to say now, you think it was for instance on the Murad cigarettes. That would be the name that the customers would associate with the manufacture of those cigarettes, wouldn't it?

431 A. Not necessarily, because it is darned hard for customers to associate cigarettes with the man who makes them.

X-Q. 42. Is that so?

A. Very few customers ask me who makes Beech-Nut cigarettes, or Beech-Nut gum; they are not concerned about it.

X-Q. 43. They rely on the name and label?

432 A. That is the idea; but when you feature Beech-Nut cigarettes, as we feature cigarettes we give them all a show. Understand, we do not take any particular brand. We feature sometimes Camels. We are out for the sales, not any particular brand; and if we can qualify the cigarette, we do it. Now, with the Beech-Nut cigarette, we qualify it with the statement that it is made by the people who make a good brand of cigarettes, such as the Moguls, Murads, and Helmars. If a person comes in for chewing tobacco, and I am featuring Apple, I say it is manufactured by the same people who make Camels. They don't care who makes it, but it is customary for us to mention the name of the company to them.

X-Q. 44. What do you mean by, "It is the custom to tell them?"

A. We tell them who makes a cigarette and qualify it with who makes some other brand along with it. 433

X-Q. 45. You do it in the ordinary course of business?

A. Oh, yes, in the ordinary sales.

X-Q. 46. If I came into the store and asked for a Camel cigarette, would you tell me who makes them?

A. Oh, no. If I was featuring Apple tobacco, and you came in and asked for B. L. and I wanted to feature Apple, I would ask you if you had ever tried Apple, and if you said no, I would tell you that is was manufactured by R. J. Reynolds, but at the same time we are not attempting to wean you from B. L., and give you Apple. I am just featuring Apple for that day. We don't feature every day, but once in awhile we give each company an opportunity. 434

X-Q. 47. That is an effective way to sell; the one product on the other products?

A. The other products, on which we give the name of the company who makes them. I, as a matter of fact, know that the people who smoke care very little who makes it, some do, but, as a general rule people care very little, who smoke, who makes it.

X-Q. 48. If that is a fact, why do you tell them who makes it? 435

A. We simply prevent them from being misled. Now, I could just as easily say that Beech-Nut cigarettes are made by R. J. Reynolds Company, but that would not be just. Whether he is interested, I can't exactly say, except I do know that nine out of ten people are not interested in who makes any particular brand.

X-Q. 49. But you produce an effect on the sales by arguing it?

A. It is a fact, because we carry the other brand of cigarettes. If we are featuring a sale on Helmars, and the same company make Beech-Nut cigarettes, we mention the name.

436 X-Q. 50. You use that as a sale argument?

A. Of course in featuring for that day, we don't always do it, but if a man comes in and asks for Camels, I don't give him a Beech-Nut and try to push it over on him, but if I am specializing on Beech-Nut, I tell him they are made by the people who make —

X-Q. 51. The reason is that you are attempting an effective way to sell it?

A. That is the idea.

X-Q. 52. And if he has a high regard for that product, he is apt to buy it?

A. Certainly.

437 X-Q. 53. If he likes the other products of that company who makes the cigarette, the chances are that he will buy it?

A. Yes, sir.

X-Q. 54. Now, you say that people come into your store,—and I think it is common experience—and ask for “Beech-Nut”?

A. Yes.

X-Q. 55. And if he comes in and asks for Beech-Nut —

A. (Witness interrupting) He usually refers to Beech-Nut cigarettes.

438 X-Q. 56. And if he asks for “Beech-Nut”, you hand him cigarettes?

A. Yes, usually; but if he specifies gum, he gets Beech-Nut gum, and if he specifies Beech-Nut Scrap, similarly he gets Beech-Nut Scrap. So gum is in the same position as Beech-Nut Scrap. If he specifies Scrap, he will get Scrap; and if he specifies gum, he will get gum.

X-Q. 57. I see. If you happen to be right —

A. Why, in the usual course of business we are right, he usually gets cigarettes, but he gets what he wants, if it is not Beech-Nut cigarettes.

X-Q. 58. Now, Mr. Hurvitz, I wish you would go back 439  
in your mind, if you can, to the time you first put in the  
Beech-Nut cigarettes, and tell me, if you remember, how  
you came to put them in. Did a jobber, or a Lorillard  
man, or somebody come around and offer you these  
cigarettes, to put them in for you?

A. The Lorillard representative comes in, just as the  
representative of any company comes in, and we give  
them the same opportunity that we give every other big  
representative company that advertises their brand.

X-Q. 59. And he came in and told you that they were  
coming out with the Beech-Nut cigarette, and got you to  
take those cigarettes and sell them? 440

A. Yes.

X-Q. 60. You knew that they were Lorillard products  
before you ever sold them?

A. Yes.

X-Q. 61. That is true?

A. Yes.

X-Q. 62. Because you are in the tobacco business?

A. Exactly.

X-Q. 63. Now, about this Beech-Nut Scrap tobacco.  
Do you sell much of that?

A. Well, we sell quite a bit of Beech-Nut Scrap, as  
a scrap tobacco. Scrap is, as a general rule, not very 441  
largely sold, but we sell more Beech-Nut Scrap than any  
other scrap.

X-Q. 64. There is not much market in this territory  
for Scrap, is there?

A. No.

X-Q. 65. Not so much as there is in the Middle West?

A. No; I know that it is sold out in the Middle  
West to a considerable extent.

X-Q. 66. One more question. Where do you have  
your gum and hard candies — do you sell hard candies?

A. We don't sell them retail.



442 X-Q. 67. How about mints?

A. We don't sell them retail.

X-Q. 68. Or Life Savers?

A. We sell them wholesale.

X-Q. 69. Where do you display, for instance, gum, in your store?

A. The retail gum, we display it right on top of the cigar showcase.

X-Q. 70. And the cigarettes are behind?

443 A. The cigarettes are behind, just as any tobacco dealer keeps them. You know, the cigars are generally in the showcase, and the cigarettes are back, and the usual practice is for the gum to be on the showcase, so that all the customer does, usually, is to help himself. We, on the contrary, keep them in jars, because we prefer to give it out ourselves so that there will be no handling of it.

Mr. Hinton: That is all.

*Re-direct Examination.*

By Mr. Cavanagh:

444 R-D Q. 37. I just want to ask one or two questions in re-direct examination. You spoke in your featuring the Beech-Nut cigarettes that you mentioned they were made by the same concern that made the Murad and Moguls and Egyptian Deities?

A. Yes.

R-D Q. 38. That is, you mean P. Lorillard Co.?

A. The Lorillard Company, yes.

R-D Q. 39. Why would you make that statement in connection with the Lorillard Company?

A. Well, we make that statement because the public, —that is, any of those who use Helmars, Murads and Moguls, know that Lorillard makes good cigarettes.

R-D Q. 40. In other words, you are selling the Beech-Nut cigarettes on the reputation of the Lorillard Company? 445

A. Why, certainly. Our chances of getting returns on Beech-Nut cigarettes, or products of any other company, would be small, unless we have a reputable firm behind them.

R-D Q. 41. So, as I understand you, the reputation of the Lorillard Co. is sufficient to sell them?

A. Sufficient to sell Beech-Nut cigarettes, yes.

R-D Q. 42. State whether or not you have ever sold any Beech-Nut cigarettes, or Beech-Nut Scrap tobacco, on the reputation of the Beech-Nut packing Company? 446

A. We never did, and we never would, no more than I do the Beech-Nut gum.

R-D Q. 43. Beech-Nut gum on what, on the reputation of the Lorillard Company?

A. I would not depend upon the reputation of one company to sell the other company's goods. I would not expect to do it to the Beech-Nut people any more than I would expect to do it to the Lorillard Company.

R-D Q. 44. As I understand it, you would not sell one product upon the reputation of another concern, which may be a different product, although they both have the same name? 447

A. No.

R-D Q. 45. In your opinion would a tobacco user, or a customer, prefer a tobacco product made by a tobacco company rather than made by a food product company?

Mr. Hinton: I object to that.

A. I refuse to render such an opinion. I can't get into a man's head—I would not venture to say what a man would do.

Mr. Cavanagh: That is all.

448

*Re-cross Examination.*

R-X Q. 71. (By Mr. Hinton.) Mr. Hurvitz, you say you never sold any of these Beech-Nut cigarettes on the reputation of the Beech-Nut Packing Company. I understand you to mean that you never told anybody that they were made by the Beech-Nut Packing Company?

A. Of course not. I would not tell anybody, and I would apply the same rule to the Beech-Nut Packing Company products, you understand. That is, I would not treat one fairly and the other unfairly.

449

R-X Q. 72. What you mean is that you didn't tell anybody that these cigarettes were made by the Beech-Nut Packing Company?

A. Positively; I never did.

Mr. Hinton: I think that is all.

*Re-direct Examination.*

R-D Q. 46. (By Mr. Cavanagh.) But I understand you to say that the reputation of the Lorillard Company was sufficient to sell their product?

A. Yes; I have stated that before.

450

Mr. Hinton: I object to that as leading in form and as a conclusion of the witness.

Mr. Cavanagh: That is all.

Mr. Hinton: That is all.

Deposition closed.

Signature waived.

451

JOHN A. RATTO, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. What is your name, age, residence and occupation?

A. My name is John A. Ratto; age 28; residence 10 Hull Street, Boston; occupation, I am running my father's store, a fruit store, at 143 Causeway Street, Boston.

Q. 2. What lines of goods do you sell in that store?

A. Fruits, that is the main line,—tobacco, candies, gum and groceries, and soda.

Q. 3. Do you sell Beech-Nut cigarettes like this exhibit package?

A. Beech-Nut cigarettes, yes.

Q. 4. And do you sell Beech-Nut Scrap tobacco, like this exhibit package?

A. Yes.

Q. 5. And also the Beech-Nut chewing gum, like the box which I show you?

A. Yes; it is a good seller.

Q. 6. Who, if you know, makes the Beech-Nut cigarette?

A. Lorillard, it is written right on the package there.

Q. 7. And who makes the Beech-Nut gum?

A. The Packing Company.

Q. 8. The Beech-Nut Packing Company?

A. Yes, sir.

Q. 9. Did you ever have the impression, or belief, that the Beech-Nut cigarettes were made by the same concern that makes the Beech-Nut gum?

A. No.

Q. 10. Did you ever know of anybody who was so confused?

452

453

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454 A. I never came in contact with anybody.

Q. 11. You never had any inquiries or heard comments that would lead you to believe that they were made by the same people?

A. No, never.

Q. 12. You say that the maker's name appears on the package. You have no difficulty in reading that name on the package of cigarettes, have you?

A. No.

Q. 13. If a customer came into your store and wanted Beech-Nut gum, would you be so confused as to sell him Beech-Nut cigarettes for Beech-Nut gum?

455 A. No.

Q. 14. And likewise, if he wanted Beech-Nut cigarettes, you would give him Beech-Nut cigarettes?

A. Yes.

Q. 15. Whose cigarettes?

A. P. Lorillard's.

Q. 16. Why wouldn't you confuse cigarettes with chewing gum?

456 A. Why, because of the difference in the packages. In Beech-Nut gum there is but one beech nut with leaves around it, and with the cigarettes there are two beech nuts. And the cigarette has a yellow border, and around the gum (pointing to the oval) it has a red border.

Q. 17. Then from the dress and shape of the package you would have no difficulty in distinguishing them?

A. No.

Q. 18. State whether or not you would ever be confused into taking any gum for any cigarette?

A. No.

Q. 19. Why not?

A. Why, usually when a person comes in they distinguish what they want, whether they want gum or cigarettes.

Q. 20. You would not confuse the two goods?

A. Not I.

Q. 21. What would you think of a man who would 457  
confuse gum with cigarettes?

A. I guess he would not know what he was going to  
purchase. That is what I figure.

Mr. Cavanagh: I think that is all.

*Cross Examination.*

X-Q. 1. (By Mr. Hinton.) You say you run a gro-  
cery store?

A. Grocery.

X-Q. 2. A delicatessen store?

A. No, just Italian goods. 458

X-Q. 3. Italian goods, an Italian grocery. You sell  
Beech-Nut Packing Company goods there?

A. Not outside of Beech-Nut gum.

X-Q. 4. You don't sell any of their goods except  
Beech-Nut gum?

A. No.

X-Q. 5. You don't sell marmalade or bacon?

A. No.

X-Q. 6. And you handle tobacco?

A. Tobacco.

X-Q. 7. Now, how did you come to put in the Beech-  
Nut cigarettes; do you remember? 459

A. How did I come to put them in?

X-Q. 8. Yes.

A. Well, they were being advertised and there was  
a demand for them.

X-Q. 9. Did the Lorillard man come around to see  
you and get you to put them in?

A. Why, yes, he came to see me, and I put them in,  
but there was a demand for them before he came around.  
I didn't put them in as soon as they were out.

X-Q. 10. How long have you been selling tobacco  
products?

460 A. All of eight years.

X-Q. 11. Do people come into your store and just ask for "Beech-Nut"?

A. Yes, certainly.

X-Q. 12. When they just come in and ask for "Beech-Nut" and don't say whether it is tobacco, cigarettes, or gum, what do you give them?

A. I ask them to distinguish whether they want gum or cigarettes.

X-Q. 13. Do you sell Lucky Strike cigarettes?

A. Yes.

X-Q. 14. Do you sell Camels?

461 A. Camels.

X-Q. 15. Do you sell Fatimas?

A. Fatimas.

X-Q. 16. And Chesterfields?

A. Chesterfields.

X-Q. 17. What is printed on the Lucky Strike package, underneath the red panel with the name "Lucky Strike" in it?

A. Well, I tell you, I never looked at it. I think it is the American Tobacco Company that is printed underneath there.

X-Q. 18. I mean on the front of the package?

462 A. I think it is the American Tobacco Company. I know it is made by them anyway. I know that.

X-Q. 19. Being in the business you would know that, of course?

A. Certainly.

X-Q. 20. Now, what is printed on the package of Fatima cigarettes underneath the picture of the girl with the cimitar?

A. I think Liggett & Myers is printed there.

X-Q. 21. And what is printed on the Camel cigarettes underneath the picture of the Camel?

A. R. J. Reynolds, I think. I know he makes them.

1030  
X-Q. 22. That is printed underneath the camel? 463

A. Well, I won't say for sure, but I know he is the man who manufactures them.

X-Q. 23. You never noticed really what is printed on any of these packages, did you?

A. Well, I know there is on everyone of them a label, I know that, of a manufacturer, that I know, but just exactly where it is I couldn't say.

X-Q. 24. But you never noticed what is printed on the front of these packages, and underneath the device, the conspicuous device that is there on the label; you never noticed what is printed on the bottom of the front of the package, did you,—no reason why you should? 464

A. No.

X-Q. 25. Now, how many customers do you wait on in a day, do you suppose?

A. Well, I couldn't say.

X-Q. 26. Just give me an estimate. Would it be fifty?

A. Yes.

X-Q. 27. One hundred?

A. Between fifty and one hundred.

X-Q. 28. An that is in the grocery trade, or the whole business?

A. Well, it is mostly fruit. We did have a good tobacco line until prices went up. 465

X-Q. 29. How many people work in this place?

A. There is five.

X-Q. 30. That is a family, is it?

A. No; there are three in the family and two outsiders.

X-Q. 31. And I suppose in the ordinary course, when a man wants to buy cigarettes he comes in and asks for whatever brand of cigarettes he wants, and puts down his money, and takes the cigarettes and walks out, and



466 you don't have any conversation with him about who makes them, or anything of the kind?

A. No.

X-Q. 32. If he came into your store and wanted Camel cigarettes, he would ask for Camel cigarettes, and you would give them to him and he would pay for them, and take them, and walk out?

A. Yes.

X-Q. 33. That is the ordinary course?

A. Yes.

X-Q. 34. Now, can you remember when you put in the Beech-Nut cigarettes? A year ago was that?

467 A. I couldn't say.

X-Q. 35. About a year ago?

A. I can't remember that.

X-Q. 36. You don't remember when you put them in. You don't remember about when you put them in?

A. No.

X-Q. 37. Now, were you making any special effort at the time you put in those cigarettes, or have you since that time, to remember any discussion that you may have had with your trade about them?

A. No, sir.

468 X-Q. 38. It would be ordinary casual conversation with a customer, and there would be no reason why you should remember that conversation any more than any other?

A. No.

X-Q. 39. You were not asked to notice and remember about that, were you?

A. No.

X-Q. 40. And you would very likely forget such a conversation about the manufacturer of Beech-Nut cigarettes, or any other cigarettes?

A. Oh, yes.

1082  
X-Q. 41. If a man asked you who made Camel cigarettes, you would not remember that for a year and a half? 469

A. Well, I know that.

X-Q. 42. I know, but you would not remember that he asked you,—you would not pay any attention to it?

A. I never had such a question thrown at me anyway.

X-Q. 43. Nobody asked you that question?

A. No.

X-Q. 44. But if you were asked you would not be apt to remember it?

A. I know who makes the brand.

X-Q. 45. You know who makes them, yes, of course. 470

A. Yes.

X-Q. 46. So far as you know you may have had discussion on this question of who made the Beech-Nut cigarettes, particularly, when they first came out, and it might slip your mind?

A. No, I never had any.

X-Q. 47. Are you positive of that?

A. Yes.

X-Q. 48. They just came in and bought them and walked out of the store?

A. That is all.

X-Q. 49. And of course what they thought you don't know? 471

A. Of course I couldn't read a man's mind.

X-Q. 50. No, you are not a mind reader, and you can't tell why they bought them. All you know is that they asked for them?

A. Well, we keep our tobacco counter in one place and the confectionery on the other side, so naturally if the man wants to buy gum, it is right in front of him, and if he wants to buy tobacco, he walks up to the tobacco counter.

Mr. Hinton: That is all.

472

*Re-direct Examination.*

R-D. Q. 22. (By Mr. Cavanagh.) You knew the Beech-Nut cigarettes were made by P. Lorillard Co.?

A. Yes.

R-D. Q. 23. What is the reputation of P. Lorillard Co. as tobacco manufacturers?

A. So far as I find them, they are O. K., and one of the biggest tobacco manufacturers in the country.

R-D. Q. 24. So you sold the cigarettes on the reputation of the Lorillard Company?

A. Yes, sir.

473

Mr Hinton: I object to that as leading. The witness has already testified that he has had no conversation with customers about the manufacture of cigarettes.

Mr. Cavanagh: That is all.

*Re-cross Examination.*

R-X. Q. 51. (By Mr. Hinton.) Didn't I understand you to say that you simply sold these cigarettes when people asked for them, and you didn't have any discussion with them about who made the cigarettes?

474

A. Why, yes, I don't believe that anybody asked about them.

R-X. Q. 52. You never had any occasion to discuss the question of who made the cigarettes with any of your customers that you can remember?

A. No.

R-X. Q. 53. They came in and asked for the cigarettes and they took them and walked out, and that is all there was about it?

A. Yes.

Mr. Hinton: That is all.

*Re-direct Examination.*

475

R-D. Q. 25. (By Mr. Cavanagh.) As I understand you, you got these cigarettes from the Lorillard Company, did you not?

A. Yes, sir.

R-D. Q. 26. And you didn't sell them on the reputation of the Beech-Nut Packing Company, did you?

A. No.

Mr. Hinton: Objected to as grossly leading.

R-D. Q. 27. State whether or not you have ever told anyone that the Beech-Nut cigarettes were made by the same people who make the Beech-Nut chewing gum?

476

A. No, I never told anyone that. In fact I have never had anybody throw that question to me.

Mr. Cavanagh: That is all.

*Re-cross Examination.*

R-X. Q. 54. (By Mr. Hinton.) As a matter of fact, you don't know why they buy the cigarettes, and as you said, you are not a mind reader, are you?

A. No.

477

Mr. Hinton: That is all.

Deposition closed.

Signature waived.

478

MAX DUBLIN, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answers to interrogatories by Mr. Cavanagh:

Q. 1. What is your name, age, residence and occupation?

A. My name is Max Dublin; age 32; I live at 1,326 Blue Hill Avenue, Mattapan; manager for my father, A. Dublin, wholesale and retail tobacconists at 834 Washington Street, Boston.

Q. 2. How long have you been in the tobacco business, Mr. Dublin?

479

A. Well, I have worked at it—I have been in it 16 years, but I have worked at it before that; but I have been with my father 16 years.

Q. 3. In your store do you sell any goods besides tobacco products?

A. Yes; a little stationery, magazines, and also gum.

Q. 4. Do you sell the Beech-Nut cigarette, like this exhibit package which I show you, and also the Beech-Nut serap tobacco, like this exhibit package which I show you?

A. Yes.

480

Q. 5. And do you also sell the Beech-Nut chewing gum?

A. Yes.

Q. 6. How long have you been selling the Beech-Nut cigarettes?

A. Why, since they came out.

Q. 7. About how long ago was that?

A. I can't remember dates.

Q. 8. To the best of your recollection, approximately how long ago, a month, or year, or what?

A. Oh, it is more than a year. Let's see how long is it? Why, I think it is over two years, but I am not positive.

Q. 9. Who, if you know, is the manufacturer of the Beech-Nut cigarettes? 481

A. The P. Lorillard Co.

Q. 10. And who, if you know, is the manufacturer of the Beech-Nut chewing gum?

A. The Beech-Nut Packing Company.

Q. 11. So far as you know, what is the reputation of the P. Lorillard Co. as a tobacco manufacturer?

A. Why, I have never had any trouble; I have found them always honorable and I know they don't do any misrepresentation, so far as I am concerned.

Q. 12. Is it a well-known concern?

A. Yes, their name is well known by everybody. 482

Mr. Hinton: Objected to as a conclusion of the witness.

Q. 13. State whether or not you were ever under the impression that the Beech-Nut cigarette or the Beech-Nut Scrap tobacco was made by the same people that make the gum?

A. No, sir, because I always knew the packing company, and the Lorillard Company. I know some of the brands they make I use in my own home.

Q. 14. You mean some of the brands of the Beech-Nut Packing Company? 483

A. Yes.

Q. 15. What do you use in your own home of those brands?

A. My mother buys them. We have used a ginger ale of theirs, and I think it is a pickle she uses. You know what I mean. And she has got, I think, a syrup from the Beech-Nut people. I have seen the name on the table, something like that, that they have, on there (indicating).

Q. 16. You are pointing to a package of gum?

484 A. Yes; something like that they have on the gum.

Q. 17. State whether or not you ever had any inquiries or heard any comments or remarks which would lead you to believe that customers or others, were under the impression that the Beech-Nut cigarettes were made by the same people who made the Beech-Nut gum?

A. Why, in my experience I haven't had anybody ask me, but in an offhand way sometimes one would say, "Is the one made by the other, or is the other made by the other," and I would say, "No, one is the Beech-Nut Packing Company, and the other is Lorillard." I said, "P. Lorillard Co. makes tobaccos and cigarettes, and the  
485 Beech-Nut Packing Company makes food products."

Q. 18. Were you ever confused,—or would you ever confuse tobacco with food products?

A. No, sir; I would not.

Q. 19. What would you think of a person who would confuse tobacco with food products?

A. I would not say what I think about others.

Q. 20. Would you think that he didn't know, or that he was crazy?

A. I don't know, I can't understand, because the packing of the cigarettes is so different. You can always tell it, and you can tell a package of gum when you  
486 see it.

Q. 21. Well, are they separate and distinct products in your opinion?

A. Yes, surely. In fact, the largest selling gum is Beech-Nut, larger than Wrigley's, and I never had anybody ask if this concern made cigarettes or Scrap tobacco. I mean that P. Lorillard Co. made the Beech-Nut gum or the Beech-Nut Packing Company ever made the Beech-Nut cigarettes.

Q. 22. State whether or not you have ever sold any Beech-Nut cigarettes as, or told anyone that those cigarettes were made by the Beech-Nut Packing Company?

A. I absolutely never did. I don't do that way. 487

Q. 23. State whether or not you have known these Beech-Nut cigarettes to be advertised?

A. They have been extensively advertised. In fact posters put up all over the stores, on the windows and newspaper advertising that I have read myself.

Q. 24. State whether or not you ever sold any Beech-Nut gum on the reputation of the Lorillard Company?

A. Well, I personally believe that the Beech-Nut Packing Company has a wonderful reputation, and I also believe that P. Lorillard Co. has a wonderful reputation; and I believe that the Beech-Nut Packing Company gum is selling on their own merit, and the cigarettes are selling on their merit as being manufactured by the P. Lorillard Co. 488

Mr. Hinton: Objected to as an opinion of the witness.

Q. 25. There is no confusion in your mind on this point at all?

A. No, sir.

Q. 26. State whether or not it is the practice, so far as you know, in the cigarette business, to wrap cigarettes in transparent paper, like this package of Beech-Nut cigarettes which I show you? 489

A. That has been done for over five years to my knowledge. The different manufacturers started in, and they are practically all packing in this way, outside of a few packages of the Turkish goods.

Q. 27. Is your store located in a business section or a residential section?

A. Why, it is now practically a wholesale district,—or rather a retail district for credit furniture dealers. That is practically what is there now.

Q. 28. How many customers do you serve a day, about,—approximately, I mean?



490 A. Well, it is about 700 a day.

Q. 29. How did you come to know that the Beech-Nut cigarettes were **put up** by the P. Lorillard Co.?

491 A. Why, it is customary when a new brand comes out, for a salesman to come in the store, and he says, "Here is a new product of the P. Lorillard Co." I happen to know who the P. Lorillard Co. are, but I know of dealers who do not know who the P. Lorillard Co. are, and the P. Lorillard Co. man says, "They manufacture Helmars and Trophies and Moguls, and so forth, and B. L. tobacco." So there is no confusion. They let them understand. They say, "This is the P. Lorillard Co. who make these cigarettes."

Mr. Hinton: Objected to as the opinion of the witness.

Q. 30. And they state that the P. Lorillard Co. make these well-known brands?

A. Yes.

Q. 31. And it is on that reputation that they sell the cigarettes?

492 A. Yes. Anybody knows that when they buy a product from the P. Lorillard Co. they guarantee the brand, that they put them in, and if anything goes wrong they have nothing to lose.

Q. 32. And that is the reputation of the Lorillard Co.?

A. That is the reputation of the P. Lorillard Co.

Q. 33. And their brands are well known?

A. Yes, they are very well known.

Q. 34. What are some of their other brands?

A. The B. L. chewing tobacco, Murad cigarettes, Helmars and Trophies and Moguls, and all the well-known brands.

Q. 35. Would you have any difficulty in distinguishing a package of cigarettes, or a package of Scrap tobacco, from a package of gum, or food products?

A. No, sir. I sold Beech-Nut Scrap tobacco first. I sold that long before I sold this. (Pointing to a package of Scrap tobacco, and also a package of cigarettes.) 493

Q. 36. How long have you been selling the Scrap tobacco, about?

A. Why, I have sold Scrap tobacco since we have been in business.

Mr. Cavanagh: That is all.

*Cross Examination.*

X-Q. 1. (By Mr. Hinton.) You say that the Beech-Nut chewing gum is one of your best sellers. As a matter of fact it is your best selling chewing gum? 494

A. Yes, it is, in my store.

X-Q. 2. And you make approximately 700 sales a day in your store?

A. Yes.

X-Q. 3. Do you mean that you personally make that many sales?

A. I didn't say that I make personally that number of sales. I say the sales in the store are about that.

X-Q. 4. How many clerks work in your store?

A. I and my father, and I have another gentleman who helps me out. 495

X-Q. 5. How many are there ordinarily, one or more than one?

A. Sometimes one and sometimes two.

X-Q. 6. Never more than two?

A. Never more than two.

X-Q. 7. You are in the wholesale and retail business?

A. Yes, sir.

X-Q. 8. And you operate that business in this same store, the wholesale sales and the retail?

A. Yes.

496 X-Q. 9. And you job these Beech-Nut cigarettes, do you?

A. Yes, sir.

X-Q. 10. And do you job other tobacco products?

A. Yes, sir.

X-Q. 11. Do you job gum?

A. Yes.

X-Q. 12. When you talk about 700 sales a day, do you mean retail sales to consuming customers, or do you include the wholesale too?

A. No, sir; there are 700 retail sales. In fact, I believe it is **more**.

497 X-Q. 13. Just the retail sales?

A. Yes, sir. We also handle newspapers; don't forget that we sell over 200 newspapers a day. That is 200 customers. It probably looks large to you.

X-Q. 14. Now, you say that some dealers don't know who the P. Lorillard Co. are?

A. No, sir; some dealers do not.

X-Q. 15. You mean tobacco dealers?

A. Why, no, sir; they are fruit merchants, or maybe they run a barber shop and handle, as a side line, tobacco.

X-Q. 16. They handle tobacco?

498 A. Yes, sir.

X-Q. 17. They handle cigarettes, and perhaps chewing tobacco and cigars there in that business?

A. It is a side line.

X-Q. 18. I am not talking about whether it is a side line or not. They are selling tobacco products to the public?

A. Yes, sir.

X-Q. 19. And they don't know who the P. Lorillard Co. is?

A. Why, they are new merchants in the business, and they have not got to distinguish one manufacturer from

the other. In fact, some think that the tobacco companies are one concern, because they buy all their tobacco from the jobber, and they think the jobbers are the owners of the product, when he sells it,—they think he owns the brand,—these small fellows don't know the difference. 499

X-Q. 20. They don't know who makes the stuff?

A. No, the small dealers who handle it as a side line; but there is nobody who sells tobacco only but who knows who manufactures it.

X-Q. 21. Would you expect a man in the tobacco business as you are, would know the P. Lorillard Co.?

A. Certainly. 500

X-Q. 22. But a man who is handling tobacco as a side line may not,—that is about it, isn't it?

A. Yes, sir; that is, I have found some in my experience that way.

X-Q. 23. Now, when you mentioned Murads, Moguls, Egyptian Dieties,—do you know that brand?

A. Yes, sir.

X-Q. 24. Do you know what manufacturer's name is featured and made prominent, if any, on those products?

A. Yes.

X-Q. 25. What?

A. Some of them say S. Anargyros, and it says on some, "Stock controlled by P. Lorillard Co." 501

X-Q. 26. What is featured on that package (showing witness box of Egyptian Dieties)?

A. Both names. The other name is written fancy, and the "P. Lorillard Co." is very plain.

X-Q. 27. Very small type, isn't it?

A. But it is distinct; you can see it.

X-Q. 28. You can see it if you look for it?

A. Well, I can see it, and I have poor eyesight.

X-Q. 29. Now, the Egyptian Dieties, do you sell those?

502 A. The Egyptian Dieties, I know all about the Egyptian Dieties, but I am not in a section that buys that cigarette,—I am not in a section where they pay 25 cents for a package of cigarettes.

X-Q. 30. How about the Murads, do you sell that brand?

A. Yes, sir.

X-Q. 31. Is that an Anargyros brand?

A. Yes, sir.

X-Q. 32. Is the name Anargyros featured on that?

A. It is on there.

X-Q. 33. Is the name, "P. Lorillard Co." printed on  
503 there, do you know?

A. I think it is in the inside, on a piece of paper between the cigarettes, the name, "P. Lorillard Co." I am not positive, but I think it is.

X-Q. 34. Did you ever notice what is printed on a package of Camel cigarettes underneath the picture of the Camel?

A. No, I didn't.

X-Q. 35. You couldn't say, you never noticed?

A. I have never noticed.

X-Q. 36. You would never notice in the natural course  
504 of events, because you would simply take the cigarettes off the shelf and hand them out?

A. I know that R. J. Reynolds make the cigarette, and I know they are Camels, and I put them on the shelf, and if anybody wants them I hand them out to them.

X-Q. 37. How many Camel cigarettes do you suppose you handle every day?

A. I handle 50 000 a week, I couldn't say by the day, but I know I buy 50 000 a week.

X-Q. 38. How about Lucky Strike cigarettes, do you happen to have noticed what is printed on the bottom of the front face of the Lucky Strike package?

A. I think it says on the Lucky Strike, "Manufactured by the American Tobacco Co." 505

X-Q. 39. You know that they are manufactured by the American Tobacco Co.?

A. Yes.

X-Q. 40. And you are guessing that the name appears on the package, are you not?

A. No, the Lucky Strike, it appears on the new brand which is put out,—which we are putting out. As you know, they put on the name.

X-Q. 41. Well, you know that.

A. That is all I can say. The American Tobacco Company, they put that on their new brands. They have not been doing it very long. For instance, most of the old packages, they have Wright's name and then their name on the back; but on the new brand they put their name on. 506

X-Q. 42. I am not talking about the general practice. I want to know if you can tell me specifically what is printed on the bottom of the package of Lucky Strike?

A. Oh, no, I could not.

X-Q. 43. You never noticed?

A. No, sir; but I have noticed on other brands. When the brand came out, I noticed when they came out with a new brand, they make this statement, "Manufactured by the American Tobacco Co." 507

Mr. Hinton: Objected to as not responsive.

X-Q. 44. Now, you can't remember with any degree of accuracy when you first put out these Beech-Nut cigarettes,—when you first started selling them?

A. No, because we handle so many different brands. I couldn't remember.

X-Q. 45. Do you remembber whether some Lorillard man, or some salesman came to you and told you that

508 these cigarettes were coming out and you wanted to stock them?

A. The usual method or way they sell me, the salesman, sometimes Mr. Madden of the Lorillard Company comes in and says to me, "Here is a new cigarette we are manufacturing. I want you to put them in. You know our reputation, and that cigarette will sell. So long as we manufacture it you are not taking any chance." Of course I have in mind that it is the P. Lorillard Co. who manufactures them.

X-Q. 46. Of course you know that he refers to the P. Lorillard Co.?

509 A. Yes, sir.

X-Q. 47. And he tells you that they are coming out with these cigarettes?

A. Yes, sir.

X-Q. 48. And you know then that it is the Lorillard brand?

A. Yes, sir.

X-Q. 49. It is very simple, isn't it? Now, you said that you had an occasional inquiry from a customer about whether one concern that makes the gum, whether the same concern makes the cigarette, indicating some doubt in the mind of the customer. Is that the fact?

510 A. Why, I have had,—yes, I have had very few retailers that I sell, which I sell to, small dealers, I don't sell to the big stores, and I have had perhaps a few consumers that I have heard them talking, but not while the purchase was made in the store. When the Beech-Nut cigarette first came out, I said, that is the same brand that they have had, they have had that brand for years. They had the Beech-Nut scrap, which I have always carried, and I have always informed the public that one brand was the Beech-Nut Packing Company, and the other the P. Lorillard Co. that makes the Helmars and the Trophies, and so forth.

X-Q. 50. But you say you have had this question come up with the retailers to whom you have sold the Beech-Nut cigarette? 511

A. I have had one or two, or more, I wouldn't say definitely on it, and I satisfied them,—I showed them the name on the goods. In fact I can't tell why they ask me, because the name "P. Lorillard Co." is there. The fact is when I see this picture on the Murad, when I see the picture, I know it is very plain that it is Lorillard's. When you see that brand you know it is their brand.

X-Q. 51. Of course a man who has been in the business for a great many years could tell that, and of course you could tell that. 512

A. Yes, I could tell the Murad was made by them.

X-Q. 52. On account of the style of advertising it?

A. I know that picture, I know that that picture is P. Lorillard's picture.

X-Q. 53. Now, you made no special effort, of course, and there is no reason why you should, to remember all the conversation you had with the consuming public and the retail dealers on this question?

A. Why, I could not, no.

X-Q. 54. You don't remember exactly when the cigarette came out, and of course you would not remember the incidental conversations you had with your customers and the retailers? 513

A. I always said to them,—I say to them of all the brands I ever sold, for instance, I saw a cigar called "Beech-Nut" cigar, and I don't know who makes it,—in fact I have seen it in stores,—but I know it is not the Beech-Nut Packing Company.

Mr. Hinton: Objected to as not responsive to the question.



514 X-Q. 55. Now, do you ever have people come in your store and say, "Give me a package of Beech-Nut"?

A. Yes, sir.

X-Q. 56. And what do you do then?

A. Why, some of the customers I happen to know, and when I know a customer that comes in and buys cigarettes every day, and he says, "A package of Beech-Nut", I give him a package of cigarettes; and if a lady comes in and asks for "Beech-Nut" I would give her gum.

X-Q. 57. And if it was not a lady or customer that you know, what would you do?

515 A. I would ask them whether it was cigarettes or gum that they wanted.

X-Q. 58. Have you got them, the gum and the cigarettes, side by side in your store?

A. No, sir; I have the gum in a jar on the case.

X-Q. 59. Are the Fatimas wrapped in a glazed paper package?

A. No, sir.

X-Q. 60. Or the Camels?

A. No, sir.

X-Q. 61. The Fatimas and the Camels are very popular brands, are they not?

516 A. Yes.

X-Q. 62. They sell in great quantities?

A. Yes.

X-Q. 63. The Camels sell more than any other, doesn't it?

A. Why, it does in my store.

X-Q. 64. You say you have used the Beech-Nut products in your home?

A. Yes; my mother has bought them. I have not bought any of them.

X-Q. 65. You have seen the Beech-Nut label on those goods?

A. Yes, and I have seen their advertising.

517

X-Q. 66. Do you see any similarity between the Beech-Nut label, as you remember it, and the label on these cigarettes?

A. Personally, I think the labels do—that the name somehow or other makes it look the same.

X-Q. 67. You think they look a good deal alike, don't you?

A. The Beech-Nut brand, yes, sir.

X-Q. 68. That label on the cigarette looks to you very much like the Beech-Nut brand?

A. Why, that type,—the type looks the same to me.

X-Q. 69. The labels?

518

A. Not the label, the type of the "Beech-Nut". I mean the Beech-Nut type,—at one time I worked in a printing business, and the type looks the same to me.

X-Q. 70. Now, you said in one place in your testimony that everybody knows the Lorillard Company?

A. Everybody that handles tobacco.

X-Q. 71. You said that dealers that didn't handle tobacco to any great extent didn't know the Lorillard Company,—what did you mean?

A. When I answered that, I meant every man who is in the tobacco business knows the P. Lorillard Co.

X-Q. 72. You mean people who specialize in some way or other in the tobacco business, that is what you meant by "everybody"?

519

A. Yes.

X-Q. 73. Naturally the Lorillard Company, being one of the largest companies in the business, people who deal in its product would know who they were?

A. Yes.

X-Q. 74. You don't mean the ordinary fellow on the street?

A. No.

- 520 X-Q. 75. As a matter of fact, the ordinary fellow on the street would not know about the Lorillard Company, would he?

Mr. Cavanagh: That question is objected to, as he has not testified to what the ordinary man on the street thinks.

A. I don't know what he thinks.

X-Q. 76. You don't know what he thinks?

- A. The average man, no, sir. I happen to know anybody in the tobacco business knows who P. Lorillard  
521 Company is.

X-Q. 77. You would expect a man in the tobacco business would know who P. Lorillard Co. is?

A. Yes.

X-Q. 78. Now, Mr. Dublin, in ordinary practice a man comes into your store to buy cigarettes, and I suppose he walks into your store and he asks you for a package of Camels, he plunks down his money, and you hand him a package of Camels and he walks out?

A. Yes.

- X-Q. 79. In ordinary practice you don't have any conversation with him as to who makes Camel cigar-  
522 ettes?

A. No, sir.

X-Q. 80. You are not a mind reader?

A. No, sir.

X-Q. 81. You don't know why he buys Camel cigarettes from anything he says, except in rare cases?

A. No, sir; I don't.

X-Q. 82. And that is true of most of the stuff that you sell, isn't it?

A. That is true of the most of the brands I sell, I don't know what the customer thinks.

X-Q. 83. You are not in the business to stand behind

the counter and discuss with customers as to who makes all these various products? 523

A. No, sir; I don't but if any customer should ask me, I would tell him.

X-Q. 84. Oh, yes, of course.

A. That is all.

*Re-direct Examination.*

R-D Q. 37. (By Mr. Cavanagh): State whether or not you have found that all the retailers know who make the Beech-Nut chewing gum, that is, the barbers and persons you have spoken of? 524

A. Why, I think everybody does who handles it. When I say "everybody" the Beech-Nut brand is on the Beech-Nut Packing Company products and, to my way of thinking, they probably know by seeing it. And the retailer also knows the P. Lorillard Co. in their line; and I think people who buy and handle Beech-Nut gum know that it is made by the Beech-Nut Packing Company.

R-D Q. 38. And who do they know the cigarettes and tobacco are made by?

Mr. Hinton: Oh, I object.

Mr. Cavanagh: Mr. Hinton's whole cross-examination has been devoted to what other people think, and really I am entitled to a few opinions on the other side. 525

Mr. Hinton: I don't think that that statement is quite accurate.

R-D Q. 39. Who do they know that the cigarettes are made by?

A. Why, by the tobacco manufacturers.

R-D Q. 40. What tobacco manufacturers?

A. Why, when I sell Beech-Nut cigarettes, I take the

526 order as manufactured by the P. Lorillard Co., and if there is any doubt in the customer's mind I tell them that they are manufactured by P. Lorillard Co., and if he is a small retailer, and he don't know who is the manufacturer, as they sell different brands of P. Lorillard Co., I mention the different brands. There is never an argument in the case. I had occasion to sell Beech-Nut cigarettes to a man last week, and I said, "If they don't sell, I will take them back. They are made by the same people that sell the large size Helmars," and he wanted to carry these, and I told him "If you carry these (referring to a package of Beech-Nut cigarettes) you are carrying them as you carry the large size Helmars, because they have a good backing behind them."

R-D Q. 41. Did you ever know in your experience of any customer confusing a Beech-Nut food product, or Beech-Nut gum, with the Lorillard Beech-Nut products?

A. No, sir.

R-D Q. 42. Do those two labels, the dress on those packages, look alike to you (showing witness a package of Beech-Nut cigarettes and also a package of Beech-Nut chewing gum)?

528 A. No, sir; but so far as the type is concerned, they are somewhat similar.

R-D Q. 43. You mean the name, "Beech-Nut"?

A. Yes, sir; the name "Beech-Nut."

Mr. Hinton: Objected to as leading.

R-D. Q. 44. As to the color of the gum packages, is there any distinction between those and the cigarette packages?

A. They are both somewhat different.

R-D Q. 45. What is the color of the gum package?

A. It is yellow, and the beech nut is red.

R-D Q. 46. You wouldn't have any trouble in distinguishing the two, would you? 529

A. No, sir.

R-D Q. 47. Did you ever know of the Beech-Nut Packing Company putting out any tobacco product at all?

A. No, sir.

R-D Q. 48. Did you ever know of the P. Lorillard Co. putting out any food products, or chewing gum?

A. No, sir.

R-D Q. 49. Did you ever know or see any Beech-Nut Packing Company product like that package of Beech-Nut Scrap tobacco in appearance? 530

A. No, sir.

R-D Q. 50. And likewise as to the Beech-Nut cigarette package?

A. No, sir.

Mr. Cavanagh: That is all.

*Re-cross Examination.*

R-X Q. 85. (By Mr. Hinton): This man to whom you sold the Beech-Nut cigarettes last week was a retailer who expected to sell them to the public? 531

A. Yes.

R-X Q. 86. And you told him who the Beech-Nut cigarettes were made by?

A. Yes, sir.

R-X Q. 87. And you told him that the Lorillard Company made the Murads and Moguls and those other brands?

A. Yes.

R-X Q. 88. Did he handle the other brands?

A. Yes; and he also sells Beech-Nut gum.

R-X Q. 89: Had he previously bought any Beech-Nut cigarettes?

532 A. No, sir; he hadn't.

R-X Q. 90. So far as you know, he hadn't?

A. No, sir; so far as I know.

R-X Q. 91. And they have been on the market around here, you say, approximately two years?

A. Yes, sir.

R-X Q. 92. And he has been selling cigarettes?

A. Yes; but he don't carry a large line, because he has a fruit stand.

R-X Q. 93. I see, but he is selling cigarettes, and has sold them for years, so far as you know?

A. Well, he is only in business a little over a year.

533 R-X Q. 94. I see. Now, if I understand the latter part of your testimony, it is to the effect that you would not mistake a package of Beech-Nut cigarettes for a package of Beech-Nut chewing gum?

A. Yes.

R-X Q. 95. Or for a package of Beech-Nut Scrap tobacco?

A. Yes.

R-X Q. 96. You would not. And you would not mistake a ham for a package of peanut butter, would you?

A. No, sir.

534 R-X Q. 97. That has got nothing to do with the label or names on the goods,—a cigarette package is a cigarette package, and a gum package is a package of gum?

A. Yes; I can tell the difference in the different brands.

R-X Q. 98. One is gum and the other cigarettes?

A. Yes, sir.

Mr. Hinton: That is all.

*Re-direct Examination.*

R-D Q. 51. (By Mr. Cavanagh): And if any customer came in retail or ordinary customer, you would

tell him the same as you told that retailer that bought the cigarettes? 535

A. I tell everyone, when we happen to sell a brand that he never had carried before—he might feel skeptical about it,—and I tell him that if he buys a brand of P. Lorillard Co. they will take it back and reimburse him, you know, and that is why I told him the same thing. If I sell Beech-Nut cigarettes, I say, “You don’t take any chance, they will take them back and guarantee the sale, so you don’t lose anything.”

Mr. Cavanagh: That is all.

*Re-cross Examination.* 536

R-X Q. 99. (By Mr. Hinton.) Then it is a very effective argument with which to get people to take your product, to tell them that it is made by the people who have such a good reputation?

A. Yes.

R-X Q. 100. That their reputation is so good?

A. Yes, sir.

R-X Q. 101. That the reputation of the manufacturer is well known, and so they are taking no chance?

A. Yes, sir; and they back it up with advertising and everything else; they sample and advertise. I have seen Beech-Nut cigarettes advertised in foreign language papers myself. They have a reputation on these products, on these Beech-Nut products. 537

R-X Q. 102. You say you sell Beech-Nut chewing gum?

A. Yes.

R-X Q. 103. Do you find you can sell the gum on the reputation of the Beech-Nut Packing Company?

A. Yes.

R-X Q. 104. In the same way?

A. Yes.



538 R-X Q. 105. But there is a great demand for the Beech--Nut Packing Company products, generally, so far as you know?

A. All I know is the gum. I know they have a good reputation.

R-X Q. 106. And that is a good sales argument in selling their stuff?

A. Yes.

Mr. Hinton: That is all.

*Re-direct Examination.*

539 R-D Q. 52. (By Mr. Cavanagh.) There is no confusion between the gum and the food product line, and the tobacco line so far as the "Beech-Nut" is concerned —

Mr. Hinton: Objected to as leading and indefinite.

A. Not so far as I know.

Mr. Cavanagh: That is all.

Mr. Hinton: That is all.

Deposition closed.

Signature waived.

(Noon recess.)

## AFTERNOON SESSION

1.30 p. m.

HARRY STONE, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. (By Mr. Cavanagh.) Please state your name, age, residence and occupation?

A. Harry Stone; age 35; residence, city; occupation, my occupation is tobacco.

542

Q. 2. Are you the proprietor of a store?

A. Yes.

Q. 3. And where is this store located?

A. At 3 Causeway Street, Boston.

Q. 4. Do you sell any goods in that store besides tobacco?

A. Yes, we sell just gum, — razor blades and gum, Spearmint, Beech-Nut, Juicy Fruit, and such stuff, all Wrigley's brands, you know.

Q. 5. Do you sell the Beech-Nut cigarette like package I show you, and this Beech-Nut Scrap tobacco, like the package I show you?

543

A. Yes, we sell both packages, cigarettes and Scrap tobacco.

Q. 6. And is this the Beech-Nut chewing gum you also sell (showing the witness a package of Beech-Nut chewing gum)?

A. Yes.

Q. 7. Who makes the Beech-Nut cigarette and the Beech-Nut Scrap tobacco?

A. They are made by P. Lorillard Co.

Q. 8. Who makes the Beech-Nut gum, if you know?

A. I don't know; I never bought it direct; I don't know. The Beech-Nut Company, I suppose.

544 Q. 9. State whether or not you would ever be confused into believing that the Beech-Nut cigarette and the Beech-Nut Scrap tobacco were made by the same people that make the Beech-Nut gum?

A. No; I know that P. Lorillard Co. make the cigarette and other brands of tobacco, but they have not got any gum.

Q. 10. Will you please state whether or not you ever knew of any customer or other person who was confused or deceived into the belief that the Beech-Nut gum people made the Beech-Nut cigarette?

545 Mr. Hinton: Objected to as leading and calling for a conclusion of witness and answer based on hearsay.

A. I never heard of it; nobody was asking me that question, that the same people make the gum and the cigarettes.

Q. 11. Would you ever confuse tobacco, such as the cigarettes and this scrap tobacco, with chewing gum so that you would be deceived into taking one for the other?

546 A. No. In the first place a man comes into a store and asks for Beech-Nut cigarettes, or Beech-Nut Scrap, and if he wants chewing gum he asks for Beech-Nut chewing gum.

Q. 12. What would you think of a person who would take Beech-Nut cigarettes, or Beech-Nut Scrap tobacco when he wants gum?

A. You mean when he comes in and asks for "Beech-Nut?"

Q. 13. Yes.

A. I would ask him what it was he wanted, Beech-Nut cigarettes or Scrap tobacco, or Beech-Nut gum. If a man comes in and expresses himself, "Beech-Nut" I mention the three names.

Q. 14. State whether or not you ever told any one that the Beech-Nut cigarettes, or Beech-Nut Scrap tobacco was made by the gum people? 547

A. No, never.

Q. 15. State whether or not anyone ever asked you that question?

A. No, never did; no, nobody asked me.

Mr. Cavanagh: That is all.

*Cross Examination.*

X-Q. 1. (By Mr. Hinton.) Mr. Stone, do you run a wholesale business as well as a retail business? 548

A. No; my business is more retail than wholesale.

X-Q. 2. But you have some wholesale business?

A. Sure.

X-Q. 3. You sell to tobacco retailers?

A. Yes.

X-Q. 4. You job Beech-Nut chewing gum?

A. No, I don't job that. I take up jobbing on my side; I buy Wrigley's, but we have a bigger demand for it than Beech-Nut, and I may sell these to retailers.

X-Q. 5. You buy this gum, whether it is Wrigley's or Beech-Nut, and you sell that to retailers? 549

A. Yes.

X-Q. 6. You sell tobacco and gum?

A. Yes.

X-Q. 7. Do you sell the Beech-Nut cigarette to these same people too?

A. Yes, sir.

X-Q. 8. And the Beech-Nut Scrap tobacco?

A. Sure.

X-Q. 9. Do you know whether there is much market for Scrap tobacco in this territory, as compared with other territories?

A. What do you mean, my territory?

550 X-Q. 10. I mean as compared with the Middle West and other parts of the United States?

A. That is a thing I can't tell you; that I don't know. I can tell you in my store that I sell quite a lot of Beech-Nut Scrap.

X-Q. 11. What do you mean by quite a lot?

A. You know my business is mostly cigarettes; that section is the foreign section, and they all smoke cigarettes, but I can sell about four dozen of the Scrap, that includes wholesale and retail both. That Beech-Nut cigarette, we sell quite a few of, about 20,000 a week.

551 X-Q. 12. How many people work in your store?

A. Only one.

X-Q. 13. That is you?

A. Me and another fellow; I am the boss and the other fellow works for me.

X-Q. 14. Do you relieve each other?

A. Yes.

X-Q. 15. Do you sell razor blades?

A. Yes; Gillette razor blades and Gems, and others.

X-Q. 16. Stationery?

A. No.

X-Q. 17. Newspapers?

552 A. Yes.

X-Q. 18. Have a lot of newspaper trade?

A. We sell the newspapers just to cover the law, to keep open on Sunday.

X-Q. 19. I see. Now, Mr. Stone, in the ordinary course of events, I suppose a man comes to your store and asks for Camel cigarettes, we will say,—

A. Yes.

X-Q. 20. —and he puts down his money,—

A. Yes.

X-Q. 21. —and he takes his cigarettes and he walks out?

A. Yes, sure.

553

X-Q. 22. And you don't have any conversation with him about who makes the Camel cigarette, do you?

A. No, of course not. It is only one Camel cigarette in the market.

X-Q. 23. But you don't tell him who makes the Camel cigarette?

A. I don't have to; he don't ask me, and I don't have to tell him.

X-Q. 24. And it is so with your other brands, they come in, put down their money, and take the Camel cigarettes or the Beech-Nut cigarettes,—or whatever they ask for, and walk out?

554

A. Yes, whatever it is, and put down 15 cents, or whatever it is, and walk out.

X-Q. 25. And not being a mind reader you don't know what is in their mind at all?

A. No.

X-Q. 26. Now, how long have you had these Beech-Nut cigarettes?

A. How long are they on the market?

X-Q. 27. How long have you sold them?

A. Since they came out.

X-Q. 28. How long is that?

A. It is almost 2 years, I think. I am not quite sure,—  
I never stopped to think of it. I think around 2 years,  
as I figure it.

555

X-Q. 29. Would you make any special effort to remember it, if customers asked you whether the Beech-Nut cigarettes were made by the gum people?

A. They never did.

X-Q. 30. You never tried to remember that particularly?

A. They never asked me.

X-Q. 31. Are you absolutely positive that nobody ever asked you that?

556 A. No, never did. They come in and asked me to give them a package of Beech-Nut cigarettes, as I said before, a package of gum, or Scrap tobacco.

X-Q. 32. And they walk out?

A. Yes.

X-Q. 33. But frequently they come in and say, "Beech-Nut", don't they?

A. Well, I don't know,—I don't think so. Of course I know they want cigarettes, because everyone knows that there are Beech-Nut tobacco and cigarettes.

557 X-Q. 24. You testified on your direct examination that people sometimes came in and asked you for "Beech-Nut", and you asked them which they wanted?

A. I didn't say that.

X-Q. 25. That never happened?

A. That never happened to me.

X-Q. 26. They don't come in and just ask for "Beech-Nut"?

A. No, sir.

X-Q. 27. And you don't ask them what they want?

A. No.

Mr. Hinton: I would like to have the witness' testimony read on this point.

558 (Witness's previous testimony read as follows:

"Q. 12. What would you think of a person who would take Beech-Nut cigarettes, or Beech-Nut Scrap tobacco when he wants gum?

A. You mean when he comes in and asks for "Beech-Nut?"

Q. 13. Yes.

A. I would ask him what was it he wanted, Beech-Nut cigarettes or Scrap tobacco, or Beech-Nut gum.

If a man comes in and expresses himself, "Beech-Nut" I mention the three names.")

X-Q. 28. We have just had read to us a portion of  
your direct testimony in point, and apparently you did  
testify that they came in and asked for "Beech-Nut"  
sometimes, and then you would ask them whether they  
wanted the Scrap tobacco, gum, or cigarettes, is that  
true or isn't it? I want the fact. 559

A. I will tell you. So far as I remember, they are  
so used to getting Beech-Nut cigarettes, that when they  
come in and ask for it, just "Beech-Nut", I know what  
they want.

X-Q. 29. Do you sell any other Beech-Nut products  
besides the gum, cigarettes and Scrap tobacco? 560

A. No.

X-Q. 30. Do you sell mints?

A. Mints, no.

X-Q. 31. Sell any lime or lemon drops or small  
candies, or anything of that kind?

A. No; no candy line at all.

X-Q. 32. Do you put out any brands of tobacco of  
your own?

A. No.

Mr. Hinton: That is all.

*Re-direct Examination.*

561

R-D Q. 16. (By Mr. Cavanagh.) When a customer  
comes in and throws down 5 cents and says that he  
wants some chewing gum, just like the tobacco, do you  
have any argument with him?

A. No.

R-D Q. 17. And suppose a man comes in asks for  
"Beech-Nut", what would you ask him?

A. I would ask him Beech-Nut Cigarettes or Beech-  
Nut tobacco, or Beech-Nut gum? That is what I mean,  
but usually he don't come in and just ask for Beech-Nut.



562 R-D Q. 18. Approximately, or in a general way, about how many customers do you serve in a day,—just in a general way?

A. Between 800 and 1,000.

Mr. Cavanagh: That is all.

Mr. Hinton: That is all.

Deposition closed.

Signature waived.

563 BENJAMIN LESCOVITZ, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. What is your name, age, residence, and occupation?

A. Benjamin Lescovitz; age 30, residence 967 Cambridge Street, East Cambridge; occupation, storekeeper: cigar store.

Q. 2. How long have you been keeping store?

A. Three years in Cambridge.

Q. 3. What kind of goods do you sell?

564 A. Tobacco.

Q. 4. Anything else besides tobacco?

A. Yes sir; I sell tonics and chocolates, that is about all.

Q. 5. Do you sell Beech-Nut gum, like this exhibit package of Beech-Nut gum which I show you?

A. Yes, Beech-Nut and Spearmint and Juicy Fruit.

Q. 6. Do you also sell the Beech-Nut Scrap tobacco like these exhibit packages I show you?

A. Yes, sir; I sell all of those.

Q. 7. Who makes the cigarettes and the Beech-Nut tobacco, if you know?

A. P. Lorillard Co.

Q. 8. Do you know who makes the Beech-Nut gum? 565

A. The Beech-Nut Packing Company.

Q. 9. Were you ever confused into the belief that the tobacco or the cigarettes were made by the people who make the Beech-Nut gum?

A. No, sir.

Q. 10. Did you ever have any inquiries or comments from anybody who did believe it?

A. Yes, sir; I had two fellows ask me, and they said, "Benny, what is this? Is this made by the same company?" (Pointing to a package of Beech-Nut cigarettes) as the Beech-Nut chewing gum." I says, "No, this is made by the P. Lorillard Company, (pointing to a package of Beech-Nut cigarettes), and this is made by the "Beech-Nut Packing Company, (referring to a package of Beech-Nut chewing gum). Only them two fellows asked me that. 566

Q. 11. How long ago was that?

A. That was last winter. They didn't ask the question because they were interested, but because of curiosity they asked it.

Mr. Hinton: The last part of the answer is objected to as a conclusion of the witness.

Q. 12. State whether or not you have sold either the Beech-Nut cigarette or the Beech-Nut Scrap tobacco as a product of the Beech-Nut packing Company? 567

A. I don't get it.

Q. 13. Did you ever sell these tobacco products as the goods of the gum people?

A. No, sir; that is impossible. If a fellow comes around and asks, "Give me Beech-Nut tobacco," I am not going to hand him a package of gum.

Q. 14. Why wouldn't you, naturally?

A. It is the same thing as if a man comes in and

568 asks for a horse and I give him a cat. They are both animals. If a man comes in to buy a package of gum and says, "Give me a package of Beech-Nut", it is my duty to ask, "Do you want Beech-Nut cigarettes?" "No, gum", so I have to give him the gum.

Q. 15. So you never had any confusion in regard to that?

A. No, absolutely not.

Mr. Hinton: Objected to as leading and indefinite.

569 Q. 16. Will you please state whether or not you ever had any confusion between the Beech-Nut cigarettes and the Beech-Nut Scrap tobacco, or the Beech-Nut gum?

A. No, absolutely no confusion at all.

Q. 17. State whether or not you have any difficulty in distinguishing between a package of Beech-Nut cigarettes, or a package of Beech-Nut scrap tobacco, or a package of Beech-Nut gum?

A. It is all different colors anyway. Cigarettes are red, and the Scrap tobacco is a white ground, and the Beech-Nut gum package is a different color; it looks kind of yellow; it is more like a light yellow.

570 Q. 18. Regarding the shape of the packages, state whether or not in your opinion does the Beech-Nut Scrap tobacco,—package of the Beech-Nut Scrap tobacco, in any way resemble a package of Beech-Nut gum?

A. Absolutely not; it is not the same.

Q. 19. Would you have any trouble in distinguishing the goods?

A. Never; absolutely no. It is all different.

Q. 20. State whether or not if a customer came into your store and asked you for a package of Beech-Nut gum you would be confused or deceived into handing him Beech-Nut Scrap tobacco or Beech-Nut cigarettes for the gum?

A. It is an impossibility. If he is asking for gum, 571  
I have got to give him gum.

Q. 21. State whether or not you consider gum to be  
the same kind of goods as tobacco?

A. No, sir.

Q. 22. How many people do you serve a day in your  
store, about,—just approximately?

A. I am not sure.

Q. 23. In a general way?

A. Around 400.

Mr. Cavanagh: That is all.

*Cross Examination.*

572

X-Q. 1. (By Mr. Hinton.) How long have you been  
selling the Beech-Nut cigarette?

A. Since February last year; February I began, just  
when they came out.

X-Q. 2. Just when they came out?

A. Just when they came out I got them.

Mr. Cavanagh: February, 1921, that is?

The Witness: Yes.

X-Q. 3. Did you make any special effort to remember 573  
whether people asked you about the people who made  
the cigarettes and the gum last year?

A. No.

X-Q. 4. You didn't keep any notes of the names of  
people who asked you about whether or not the ciga-  
rettes were made by the gum people, did you?

A. No, I didn't.

X-Q. 5. You didn't make any effort to remember it  
at all?

A. Absolutely no; because you see the customers are  
in the store, and they simply asked me, as a foolish

574 question: "Say, Benny, is this the same company, the Beech-Nut gum and the Beech-Nut cigarette?" And I said, "No, the gum is made by the Beech-Nut Packing Company and the cigarettes are made by P. Lorillard Co."

X-Q. 6. When they asked you, you told them they were made by different companies?

A. Yes, sir.

X-Q. 7. And you didn't pay any attention at all to it at the time?

A. No.

575 X-Q. 8. And you couldn't say definitely how many times it happened, could you?

A. No; they didn't ask me any more. About two fellows asked me.

X-Q. 9. You don't remember whether there were any others or not?

A. No.

X-Q. 10. There may have been others?

A. No. I will tell you; I, myself, was in the store last year, and I could remember easily enough if anybody asked me, but nobody asked me; two fellows only asked me.

576 X-Q. 11. You don't think there were any more than that?

A. No.

X-Q. 12. But you paid no attention to it?

A. I didn't pay any attention, but I would remember if some customers asked me the same question over again; but only two fellows did ask me that question.

X-Q. 13. Now, in the ordinary course, suppose a customer comes there and asks for Beech-Nut cigarettes, or Camel cigarettes, or something like that, he puts down his money and takes the goods and walks out,—that is what he does, isn't it?

A. If I hand him the item, he gives me the money, 577  
yes.

X-Q. 14. You don't have any discussion with a customer as to who makes this or that?

A. No, unless somebody asks the question.

X-Q. 15. Now, when you were talking about confusion between the tobacco and the gum, and the cigarettes, what you meant, I suppose, was that you were able to tell a cigarette package from a package of gum, and from a package of Scrap tobacco, very easily?

A. Positively.

X-Q. 16. You would not ever get confused into mistaking a package of Beech-Nut chewing gum for a package of Beech-Nut cigarettes? 578

A. No. When they ask for Beech-Nut cigarettes, I reach out and get hold of the cigarettes, and when they ask for something else I will give them that. There is never any mistake.

X-Q. 17. When a customer comes into your store and just asks for "Beech-Nut" you say, "What do you want, the cigarettes, gum or tobacco?"

A. Yes; I never know. Now, the Beech-Nut Scrap tobacco is a slow seller in my store, but take the Beech-Nut cigarette and the Beech-Nut gum sells very well, and if a man comes around and says, "Give me a package of Beech-Nut," I say, "Which do you want, cigarettes or gum?" And he says, cigarettes or gum. 579

X-Q. 18. And there is no more discussion than that?

A. Positively not; and he knows from the price which it is; the gum is only a nickel, and cigarettes are 15 cents.

Mr. Hinton: That is all.

*Re-direct Examination.*

R-D Q. 24. (By Mr. Cavanagh.) State whether or not when you say, "Beech-Nut cigarettes or Beech-Nut

580 gum," do you have any discussion with the customers, or do they say which they want, and throw down their money, and take it and go out?

A. They say, "Give me a package of Beech-Nut gum," or "a package of Beech-Nut cigarettes," and I give it to them.

R-D Q. 25. And that is all there is to it?

A. Yes.

Mr. Cavanagh: That is all.

Mr. Hinton: That is all.

Deposition closed.

Signature waived.

581

HUGH F. WALLACE, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh.

Q. 1. Please state your name, age, residence and occupation?

A. Hugh F. Wallace; 514 Broadway, Somerville, Mass.; salesman for Leopold, Morse Co.

582

Q. 2. What line of business is Leopold, Morse Company engaged in?

A. Clothing, furnishings, shoes.

Q. 3. Mr. Wallace, I show you a package of Beech-Nut cigarettes, which are in this case as an exhibit. Did you ever use those cigarettes as a consumer?

A. I have.

Q. 4. How long have you been smoking them?

A. 12 or 15 months.

Q. 5. So far as you know, what concern manufactures those cigarettes?

A. P. Lorillard, so far as I know.

Q. 6. Did you ever believe that any other concern 583  
manufactured them?

A. I never did, no.

Q. 7. I show you a package of Beech-Nut gum, which  
is in this case as an exhibit. Can you state whether or  
not you have ever used any Beech-Nut chewing gum?

A. I have; yes, I have used it.

Q. 8. State whether or not you were ever confused  
or thought that the cigarettes were made by the same  
people who make the gum?

A. No, I knew that they were not, because I see the  
name, "P. Lorillard Co." all over the cigarette pack-  
age, and the name of the packing company on the oth- 584  
er,—on the gum package.

Q. 9. Did you ever have any difficulty in distinguish-  
ing between the two packages?

A. No, I never did.

Q. 10. How often have you bought the Beech-Nut  
cigarette?

A. Well, I use about a package every day.

Q. 11. How long have you been using them, do you  
say?

A. About 12 months, 12 or 15 months. How long  
have they been out?

Q. 12. Oh, about that time. If you went into a store 585  
state whether or not you could be confused or deceived  
in taking a food product, or Beech-Nut gum in place of  
Beech-Nut cigarettes?

A. No.

Q. 13. Why not?

A. I could tell from the red package what I was  
getting and by the signs on it.

Q. 14. Could you tell the difference between the two  
products?

A. Yes, easily.



586 Q. 15. In other words, you would not confuse cigarettes with gum or food?

A. No.

Mr. Cavanagh: That is all.

*Cross Examination.*

X-Q. 1. (By Mr. Hinton): Mr. Wallace, are you acquainted with any of the Lorillard men in Boston?

A. Well, I ran a store in City Square, in Charlestown, Massachusetts, for a long time.

587 X-Q. 2. What kind of a store?

A. Gent's furnishings; and there was a Mr. Madden, who worked for the company, and he had the habit of coming in, and he is the man who started me on Beech-Nut cigarettes, I smoked Murads before, but I have been smoking Beech-Nuts ever since.

X-Q. 3. And this man was the employee of the P. Lorillard Co.?

A. I suppose so. He had the habit of coming into our store.

X-Q. 4. And he gave you some samples of Beech-Nut cigarettes?

588 A. That is how I got started on them. Before that he came and asked me if I smoked cigarettes, and I told him yes, and at that time I was smoking a Murad. He got me started on these Beech-Nuts, and I have smoked them ever since.

X-Q. 5. He gave you samples and told you that it was a good cigarette, and you started smoking them?

A. Yes.

X-Q. 6. You knew that he was Lorillard man, and he told you he had this brand, this new brand of cigarettes—

A. I didn't know at this time whom he was working

for, but I did know,—I could see the name—"P. Lorillard Co." on the package. 589

X-Q. 7. Yes, but this man was an employee of the Lorillard Company?

A. I suppose so.

X-Q. 8. And he gave you samples?

A. Yes.

X-Q. 9. It would not be possible that he would give you samples of somebody else's cigarette, if he was a Lorillard man, but it would be a Lorillard product?

A. Yes, of course.

X-Q. 10. Now, you say that before that you smoked Murad cigarettes? 590

A. Murad cigarettes.

X-Q. 11. Who is the manufacturer of the Murad cigarettes?

A. I suppose Lorillard, but I don't know for sure.

X-Q. 12. Didn't you ever get samples of Murad cigarettes from your friend, the Lorillard man?

A. No, not at that time; I don't know that they passed them out at that time.

X-Q. 13. You bought them on the market?

A. Yes.

X-Q. 14. How many packages of Murad cigarettes do you suppose you smoked? 591

A. Oh, a lot of them.

X-Q. 15. You smoked them for some time?

A. Yes, sir.

X-Q. 16. A year or two?

A. Oh, four or five years, I think.

X-Q. 17. What manufacturer's name is printed on the Murad cigarette package?

A. That I don't know; I have smoked them and never noticed.

X-Q. 18. Did you ever smoke the Fatima cigarette?

A. No.

592 X-Q. 19. Did you ever smoke the Lucky Strike cigarette?

A. Yes.

X-Q. 20. What is printed on the bottom of the front of Lucky Strike cigarette packages?

A. You have got me. I am no cigarette man, but I have smoked them.

X-Q. 21. What is printed on the bottom of the front of the Chesterfield cigarette package; do you know that?

A. I don't know. I know it is a white package.

593 X-Q. 22. But you never noticed the name of the manufacturer on any of these other cigarettes that you have seen or smoked?

A. No, but take the Perfection cigarette, I know that that is a Liggett & Meyers, and Sweet Caporal is Dukes, I think, I am not sure,—or Kinney Brothers.

X-Q. 23. What is on the front of the Sweet Caporal, near the bottom?

A. Kinney Brothers.

X-Q. 24. That appears on the package near the bottom?

A. Near the bottom.

594 X-Q. 25. When did you first notice the name "Beech-Nut Packing Company" on the gum package?

A. Well, I have often bought the package, the gum, and I have gone to stands on the Elevated structure and bought Beech-Nut gum.

X-Q. 26. And you read the name carefully enough to see the name "Beech-Nut Packing Company"?

A. Not carefully, but I just glanced at it.

X-Q. 27. Did you know before you prepared for this testimony that there was "Beech-Nut Packing Company" printed on the gum packages?

A. Yes, sir.

X-Q. 28. Then with reference to the Murad cigarette and the Lucky Strike cigarette, you don't know what

is printed on those packages, but in respect to the chewing gum you do know? 595

A. Well, some of them I do, and some I do not.

X-Q. 29. You just happened to notice those two things?

A. Not only on those, but I have noticed on the Sweet Caporal cigarette, and I think Liggett & Meyers on the Perfection, and the Chesterfield, I don't just know what that is, or the Mogul.

X-Q. 30. Now, do you ever use any of the Beech-Nut Packing products in your home?

A. Yes, sir; my sister has bought it.

X-Q. 31. What kind of product? 596

A. Bacon, that is all I remember of seeing there. I suppose there have been other goods in there, but that is a long strip of bacon, and very thin,—I remember that.

X-Q. 32. It comes in closed packages?

A. Yes.

X-Q. 33. Have you examined that label recently?

A. No, I have not noticed that.

X-Q. 34. Do you know whether the name "Beech-Nut Packing Company" appears on that label?

A. I do not.

X-Q. 35. You don't know? 597

A. I don't know; I never looked at it.

X-Q. 36. Did you ever handle any tobacco products?

A. I never did, no, sir.

Mr. Hinton: That is all.

*Re-direct Examination.*

R-D. Q. 16. (By Mr. Cavanagh): Mr. Wallace, I call your attention to a package of Murad cigarettes, and also to a package of Beech-Nut cigarettes, which is in this case as an exhibit. In your opinion—both of those

598 packages bear the name of "P. Lorillard Co.",—in your opinion, which appears more prominent, the name "P. Lorillard Co." on the Beech-Nut cigarette package, or the Murad cigarette package,—which would strike your eye first?

A. On those two samples I think the word "Lorillard"—

R-D Q. 17. Well, I mean between the two packages, which name, "P. Lorillard Co." could you read more easily?

599 A. This package right here (pointing to the package of Beech-Nut cigarettes). The Beech-Nut cigarettes has the name most prominent, I think, of the two.

Mr. Cavanagh: That is all.

*Re-cross Examination.*

R-X Q. 37. (By Mr. Hinton): Mr. Wallace, you have examined these two packages of cigarettes on the table immediately in front of you. Have you seen the name of P. Lorillard on this Murad cigarette package?

A. Yes, I have seen it in black and white, isn't that, on the face, the black running on the bias there across the face of it?

600 R-X Q. 38. Will you please examine that carefully? (Witness does so.) You find that the black and white print is not the name "P. Lorillard Co."?

A. No, I see it is not.

R-X Q. 39. Do you find the name, "P. Lorillard Co." on that package which you have now again examined for some time? (Referring to package of Murad cigarettes.)

A. I don't see it on there at all.

R-X Q. 40. You haven't seen it at all?

A. Yes, I see it now.

R-X Q. 41. You finally see it when you study it over 601  
carefully?

A. Yes; right on the bottom.

Mr. Hinton: That is all.

*Re-direct Examination.*

R-D Q. 18. (By Mr. Cavanagh.) You had some diffi-  
culty in finding the name "P. Lorillard Co." on the Mur-  
ad package. I now put this Beech-Nut cigarette pack-  
age at the other end of the table, approximately four  
feet away. Do you have any difficulty in reading the 602  
name, "P. Lorillard Co." on it?

A. I can read it very easily.

R-D. Q. 19. I put the two packages at a distance  
across the table (referring to the Beech-Nut cigarette  
package and the Murad cigarette package). State  
whether or not you can read the name of "P. Lorillard  
Co." on each of them, and on which is it the most prom-  
inent?

A. I can read the name "P. Lorillard Co." there on  
the Beech-Nut cigarette package, but not on the Murad,  
it is too small.

R-D. Q. 20. Which appears the more prominent to 603  
you?

A. The name on the Beech-Nut cigarette package 03

Mr. Cavanagh: That is all.

Mr. Hinton: I have no further questions.

Deposition closed.

Signature waived.

604 GEORGE O. ADAMS, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. What is your full name?

A. George O. Adams.

Q. 2. Are you the proprietor of the cigar stand in the Chamber of Commerce Building?

A. I am.

Q. 3. How long have you been proprietor of this stand?

605 A. Since November, 1921.

Q. 4. Do you sell the Beech-Nut cigarettes?

A. I do.

Q. 5. And also the Beech-Nut gum?

A. Yes.

Q. 6. Who, do you know, make the Beech-Nut cigarettes?

A. P. Lorillard Co.

Q. 7. Have you ever had any inquiries, or heard any comments from customers, asking if the Beech-Nut cigarettes were made by the same people that make the Beech-Nut gum?

606 A. No.

Q. 8. Did you ever have any confusion in that respect between the two goods at all?

A. No.

Q. 9. And you have been here daily at this stand since you bought it?

A. Every day.

Mr. Cavanagh: I think that is all.

*Cross Examination.*

607

X-Q. 1. (By Mr. Hinton.) How long have you been in the tobacco business?

A. Since November.

X-Q. 2. You just started in in November?

A. Yes, sir.

X-Q. 3. Did you make any special effort to remember whether people asked you about these cigarettes?

A. No special effort, no.

X-Q. 4. Did anybody ask you to make a note of any questions that have been asked you in that connection?

A. What do you mean?

608

X-Q. 5. Did anybody ever ask you to try to remember and make a note if anybody did ask you about the chewing gum an cigarettes?

A. No.

X-Q. 6. And you made no special effort to remember?

A. No.

X-Q. 7. Now, this is a very busy little stand in the Chamber of Commerce which you keep?

A. Yes.

X-Q. 8. And people walk by rapidly and slap down their money and ask for this or that kind of goods and take the goods and walk along?

609

A. Yes.

X-Q. 9. And it is a very rare thing for you to have conversation of any kind about the manufacturer of the product you sell?

A. Yes; they call for what they want and get it and go on.

X-Q. 10. And of course you have no way of knowing what is in the man's mind, but if he asks for Beech-Nut cigarettes, he gets them?

A. Yes.

X-Q. 11. And he walks off?



610 A. Yes.

X-Q. 12. Do you sell any other Beech-Nut Packing Company product except gum? Do you sell mints?

A. No, I don't think I have anything but the gum.

X-Q. 13. Can you tell offhand what is printed on a package of Lucky Strike cigarettes underneath the red panel?

A. No. I could not.

X-Q. 14. You sell lots of those, don't you?

A. Quite a few.

Mr. Hinton: That is all.

611

*Re-direct Examination.*

R-D. Q. 10. (By Mr. Cavanagh.) If you have had any great number of inquiries as to who made the Beech-Nut cigarettes, you would recall it?

A. Yes, of course.

Mr. Hinton: Objected to as leading, and calling for the conclusion of the witness.

Mr. Cavanagh: That is all.

Mr. Hinton: That is all.

Deposition closed.

612

Signature waived.

GEORGE C. SMITH, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. Will you please state your name, age, residence and occupation?

A. George C. Smith; 152 Chestnut Avenue, Jamaica Plain; occupation, manager of the Faneuil Hall

Smoke Shop, 1 Faneuil Hall Square, Boston, Massachusetts; 29 years old,—born in 1892. 613

Q. 2. What do you sell in your store, Mr. Smith?

A. We sell tobacco, sodas, lunches, and Beech-Nut gum. That is all we sell of the Beech-Nut product.

Q. 3. I show you a box, or a package of the Beech-Nut gum, an exhibit in this case. Is that the kind of gum you sell, which you refer to?

A. Yes.

Q. 4. Do you sell Beech-Nut cigarettes like the package I show you?

A. Yes.

Q. 5. Who makes the cigarettes?

A. P. Lorillard Co. 614

Q. 6. And who makes the gum?

A. The Beech-Nut Packing Company.

Q. 7. Would you ever be confused into believing that the Beech-Nut cigarettes were made by the Beech-Nut Packing Company?

A. Personally, no.

Q. 8. Do you handle the Beech-Nut Scrap tobacco, like the package which I show you?

A. We do.

Q. 9. Who makes the Scrap tobacco?

A. P. Lorillard. 615

Q. 10. Have you always believed that he made this tobacco?

A. P. Lorillard so far as I can remember.

Q. 11. Did you ever believe that that was made by the gum people?

A. No.

Q. 12. Did you ever hear any comments or remarks from customers, or people which would lead you to believe that they thought that either the Beech-Nut cigarettes or the Beech-Nut Scrap tobacco was made by the concern that makes the Beech-Nut gum?

A. Well, I can remember distinctly two cases where

616 people have come in and asked me if the Beech-Nut Packing Company put out the cigarette. That is when they first came out. I told them that they had nothing to do with each other.

Q. 13. How long ago was that?

A. That is when the Beech-Nut cigarette first came out. I think that is pretty nearly two years, very close to it.

Q. 14. And those are the only two instances of that?

A. That is the only two I can remember.

Q. 15. How many customers a day do you serve, approximately?

617 A. About 375; it will average more than that in a week's time, because Saturdays it will run 600 or 700 customers. That is on cigars alone; it does not include the fountain or lunches.

Q. 16. Is your store located in a business section of the city?

A. It is right in Faneuil Hall Square.

Q. 17. It is right in the business section?

A. Yes, right in the market there.

Q. 18. State whether or not you ever heard of the Lorillard Company making either chewing gum or food products?

618 A. No; I never heard of it.

Q. 19. State whether or not you ever heard of the Beech-Nut Packing Company making tobacco products?

A. I never heard of it, no.

Q. 20. If a person came into your place of business and wanted to buy Beech-Nut cigarettes, or Beech-Nut scrap tobacco, could you be confused into selling him Beech-Nut gum in place of it?

A. No, I would not be confused.

Q. 21. Why?

A. Because they are different altogether.

Mr. Cavanagh: That is all.

*Cross Examination.*

619

X-Q. 1. (By Mr. Hinton.) How long have you been manager of the Smoke Shop?

A. I think I have been down there two years the first of June.

X-Q. 2. How long have you been in the tobacco business?

A. I have been in the tobacco business ten years last May.

X-Q. 3. Now, Mr. Smith, did you make any particular note of the inquiries that you referred to, about whether the cigarettes were made by the gum people,— did you make a note of it at the time?

620

A. I made no note of it, no.

X-Q. 4. Did you pay any particular attention to it?

A. No.

X-Q. 5. Did you make any effort to remember it?

A. No, I didn't.

X-Q. 6. But you can remember two cases?

A. I can remember two cases, there may have been five or six, but I can't remember over two.

X-Q. 7. There may have been others?

A. There may have been others, but I don't remember it.

621

X-Q. 8. Now, I suppose a man comes into a busy place like yours, and he asks for what he wants, and he plunks down his money, and gets it and goes out?

A. Yes.

X-Q. 9. And if he asks for Camel cigarettes he gets them and goes out?

A. Yes.

X-Q. 10. And he does not discuss Camel cigarettes with you?

A. No.

X-Q. 11. Of course, you can't tell what he thinks about it, unless he tells you?

622 A. No.

X-Q. 12. Do you sell much of that Beech-Nut Scrap tobacco?

A. Well, the Scrap tobacco is not a big seller; that is, I would not call it a big seller, not in the store that I am in, but I probably sell six dozen a month. I don't call that big.

X-Q. 13. Have you examined a package of this Beech-Nut Scrap tobacco recently?

A. Well, no, not particularly I have not.

X-Q. 14. Do you know whether the name Lorillard's is on this scrap tobacco?

623 A. Yes, I do.

X-Q. 15. Where is it?

A. I believe it is on the front of the package, right on top.

X-Q. 16. Up here at the top where I show you?

A. Yes, sir.

X-Q. 17. Do you know what is written in the other three panels, that is like that on this package (indicating a package of Beech-Nut Scrap tobacco.)

A. What do you mean, on the other side?

624 X-Q. 18. Well, there are four panels on this package like this panel with the name "Lorillard's" in it. Can you tell me what is written in any of the other three?

A. Well, "Beech-Nut Scrap Tobacco", on one, and there should be the factory number there somewhere.

X-Q. 19. How does Beech-Nut gum sell in your store?

A. It sells very good. That is, I say good; we sell probably four boxes a week.

X-Q. 20. Is it the best selling gum you have?

A. Yes, it is.

X-Q. 21. Do people ever come into your store and ask you for a package of "Beech-Nut" without saying whether they want cigarettes or the gum?

A. I never had them say that to me in any case. If a man should come in, and I am on the cigar counter and asks for "Beech-Nut", I should ask him, "Cigarettes" or "Scrap"? 625

X-Q. 22. You don't carry your gum on the same counter with your tobacco?

A. No.

Mr. Hinton: That is all.

*Re-direct Examination.*

R-D Q. 22. (By Mr. Cavanagh.) When a man comes in and wants to buy Beech-Nut gum does he throw down a nickel and take the gum without talking about it? 626

A. Yes; they never say anything.

R-D Q. 23. Just the same as they do with the cigarettes which you spoke of?

A. Yes, and he goes off. If I am on the counter and he asks for gum, he gets it and goes off.

Mr. Cavanagh: That is all.

Mr. Hinton: That is all.

Deposition closed.

Signature waived.

(The taking of further depositions adjourned to Thursday, August 10, 1922, at 10 a. m.)

628

Room 401, Exchange Building,  
53 State Street, Boston, Mass.,

August 11, 1922.

The further taking of testimony is resumed at  
10 a.m.

Present: Same as before.

AARON ANSEL, a witness called in behalf of the de-  
fendant being first duly sworn, deposes and says, as  
follows, in answer to interrogatories by Mr. Cavan-  
agh:

629

Q. 1. What is your name, age, residence, and occu-  
pation?

A. Aaron Ansel; age 24; residence 884 Washington  
Street,—that is the business place.

Q. 2. And your occupation?

A. Well, owner of a cigar store.

Q. 3. Is this cigar store located in a business or  
residential section of the city?

A. Business.

Q. 4. What is the name of the cigar store?

630

A. It goes under the name of the "Economical  
Tobacco Company."

Q. 5. You are a clerk in that store?

A. No, I am part owner with my father in the busi-  
ness.

Q. 6. Do you serve customers in that store?

A. Yes; I do.

Q. 7. About how many customers do you serve a  
day,—approximately?

A. Fifteen to sixteen hundred.

Q. 8. Do you sell the Beech-Nut cigarette and the  
Beech-Nut Scrap tobacco?

A. Yes.

Q. 9. And do you also sell Beech-Nut gum in your store? 631

A. Yes, sir.

Q. 10. Do you know who makes the Beech-Nut Scrap tobacco and the Beech-Nut cigarettes?

A. Yes; P. Lorillard Co.

Q. 11. And do you know who makes the Beech-Nut cigarettes?

A. Yes; P. Lorillard Co.

Q. 12. And do you know who makes the gum?

A. The Beech-Nut Packing Company.

Q. 13. Will you state whether or not you were ever under the impression that the Beech-Nut Scrap tobacco and the Beech-Nut cigarette were made by the same company that makes the gum? 632

A. I never was.

Q. 14. Will you state whether or not during your experience or service in your store you ever have had any questions come up, or heard any remarks or inquiries from customers, or others, which would leave you under the impression that they thought the gum people made the cigarettes?

A. Well, just once; I recall one person.

Q. 15. How long ago was that?

A. That was about seven or eight months ago. 633

Q. 16. And that is all you can remember?

A. That is all I can recall.

Mr. Cavanagh: That is all.

*Cross Examination.*

X-Q. 1. (By Mr. Hinton): How many people work in that store that you run?

A. There are—well, all in all?

X-Q. 2. Yes.

A. There are five.



- 634 X-Q. 3. Is that a cigar store exclusively?  
A. Well, it is a wholesale cigar store, and retail; we also carry confectionery.
- X-Q. 4. Roughly, what proportion of your business is a wholesale business, do you know?  
A. Well, I should say about 75 per cent.
- X-Q. 5. 75 per cent. wholesale and—  
A. 25 per cent. retail.
- X-Q. 6. Yes. Now, did you make any effort to remember if customers asked you about these Beech-Nut cigarettes and who they were made by?  
A. Well, no; nobody ever asked me about who they were made by.
- 635 X-Q. 7. So far as you can remember?  
A. So far as I can remember; yes.
- X-Q. 8. But at the time those questions might have been asked you, would you make a note of them, or try to remember them?  
A. No; but if they asked me I would remember them all right.
- X-Q. 9. You wait on a great many customers every day?  
A. Yes; I am behind the counter all the time.
- X-Q. 10. And everything that any customer said,  
636 you would remember that?  
A. Yes; I would remember that positively.
- X-Q. 11. You would remember all that is said to you?  
A. Yes; everything is remembered.
- X-Q. 12. If a hundred customers came to you and made remarks, you could remember a year afterwards the remarks?  
A. Oh, yes; I have a good memory on that; I try to get an idea of it anyway.
- X-Q. 13. Even though it was just a casual remark at the time they said it?  
A. Oh, yes, I would remember.

X-Q. 14. How long have you been selling the Beech-Nut cigarettes? 637

A. Now, I don't really remember when they first came out, but I believe it is over a year ago now.

X-Q. 15. About how many packages would you sell a day when they first came out?

A. Well, I would sell on an average in a day about 150 or 160 packages,—a day.

X-Q. 16. A day or a week?

A. A day.

X-Q. 17. Now, when a man comes into your store in the ordinary course of business, and asks for Camel cigarettes, he puts his money down, takes the goods and walks out, and you would not in the ordinary course have any discussion with him about who makes them? 638

A. No.

X-Q. 18. And you could not tell from looking at his face when he walked in, or at the back of his head when he walked out, about what he thought about who made that stuff?

A. No.

X-Q. 19. You would have no idea about what was in his mind?

A. No.

X-Q. 20. Unless he told you? 639

A. No.

X-Q. 21. In the ordinary course he would not tell you, would he?

A. That is right.

Mr. Hinton: That is all.

*Re-direct Examination.*

R-D Q. 17. (By Mr. Cavanagh): Will you state whether or not if 10 or 15 people had come into your

640 store daily and asked you if the Beech-Nut cigarettes were made by the gum people you would have recalled it?

Mr. Hinton: Obejcted to as leading.

A. Oh, yes, I would.

R-D Q. 18. Will you state whether or not you ever told anyone that the Beech-Nut cigarettes were made by the gum people?

A. Oh, no: I never told anybody that. I always knew it was P. Lorillard Co. that made the cigarettes.

641

Mr. Cavanagh: That is all.

R-X Q. 22. (By Mr. Hinton): Did you ever tell anybody that they were not?

A. Yes, I did; one party he wanted to know, and I just told him about it.

Mr. Hinton: That is all.

Mr. Cavanagh: That is all.

Deposition closed.

Signature waived.

642

GEORGE DOUGALL, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. What is your full name, Mr. Dougall?

A. George Dougall.

Q. 2. Where do you reside, Mr. Dougall?

A. I live at 96 Grant Street, Somerville, Mass.

Q. 3. And what is your occupation?

A. Manager cigar store department.

Q. 4. What store are you connected with?

643

A. L. K. Liggett & Company.

Q. 5. Where is their store located?

A. 242 Huntington Avenue, Boston.

Q. 6. How many years have you been the manager of that cigar store?

A. I have been manager in the cigarette department about 8 years.

Q. 7. In this store do you sell Beech-Nut cigarettes?

A. Yes, sir.

Q. 8. Do you sell any Beech-Nut scrap tobacco?

A. No, sir.

Q. 9. In that store do you sell the Beech-Nut chewing gum? 644

A. We do.

Q. 10. Who, if you know, makes the Beech-Nut cigarette?

A. Why, P. Lorillard Co. makes the Beech-Nut cigarette.

Q. 11. Do you know who manufactures the Beech-Nut chewing gum?

A. The Beech-Nut Packing Company.

Q. 12. Will you state whether or not you were ever under the impression that the Beech-Nut cigarettes were made by the same people that make the Beech-Nut chewing gum? 645

A. Why, I never was under the impression. There was only once that I can remember when a young fellow asked me, when they first started, he came in—

Q. 13. I mean yourself,—were you ever yourself under the impression that the Beech-Nut cigarettes were made by the same concern that makes the gum?

A. No, sir.

Q. 14. Well, will you please state whether or not you have had any questions, inquiries, or comments made by customers, or others, which would lead you to think that

646 they were under the impression that these cigarettes were made by the gum people?

A. I have just had one instance that I remember.

Q. 15. Please state it.

A. That is when the cigarettes first came out somebody came in the store and asked me if they were made by the same people that made the gum.

Q. 16. What was your answer?

A. Why, I told them that the cigarettes were made by the P. Lorillard Co. and that the gum was made by the Beech-Nut Packing Company.

Q. 17. About how many customers a day do you serve  
647 in your store?

A. Well, I serve about 800 or 900.

Q. 18. Is the store located in a business section of the city?

A. Yes, sir.

Q. 19. How long have you been selling Beech-Nut cigarettes, about?

A. Well, I have been selling them since they came out, that is about a year and a half or two years, isn't it? I could not exactly tell you the exact time.

Q. 20. And as far as you recollect you have only had this one inquiry in regard to who manufactures them?

648 A. That is the only one.

Mr. Cavanagh: That is all.

*Cross Examination.*

X-Q. 1. (By Mr. Hinton.) You wait on 800 or 900 customers a day?

A. Yes, sir.

X-Q. 2. How many people work behind the counter in that store?

A. Well, I am the only one that is there on the cigar

counter just now. We have had two men until just lately. 649

X-Q. 3. And that keeps you pretty busy, I suppose?

A. Yes, it does.

X-Q. 4. I suppose you are handing out goods just about as fast as you can, in the ordinary course?

A. Yes, sure.

X-Q. 5. Customers coming in and buying goods and walking out?

A. Yes.

X-Q. 6. Now, in the ordinary course a man comes in and wants, for instance, Camel cigarettes, and he asks for a package of Camel cigarettes, and takes them and puts down his money, and walks away with the goods, and you don't have any conversation with him about who makes the goods? 650

A. No.

X-Q. 7. And not being a mind reader you can't say what he thinks about them as to who makes them, can you?

A. Why, no, not when he don't bring up the subject.

X-Q. 8. How long ago was this single inquiry that you heard?

A. That was just when we were first putting them out. That is when we had a display on the counter. There was one while that the Liggett Company displayed them on the counter and also put a sign in the window. 651

X-Q. 9. Were you asked by anybody at that time to make a note of any inquiries or remarks that you had or might hear?

A. No, sir.

X-Q. 10. You made no special effort to remember it?

A. No, sir.

X-Q. 11. And you say you are quite busy and there is no reason why you should make a special effort to re-

652 member a remark of a customer like that,—you would not pay particular attention to it,—you would not, would you?

A. Why, yes, I would pay particular attention to it if they spoke to me about it.

X-Q. 12. It would be an important matter to you?

A. Why, yes, it would be an important matter.

X-Q. 13. Why would you pay attention to it?

A. Why, a man behind the counter is supposed to satisfy the public. If you came in and asked me a question, you would think I was a very poor salesman if I could not answer that question.

653 X-Q. 14. Oh, perhaps you misunderstood me. I appreciate that you know who makes the products you sell, and I appreciate that you would not misrepresent any product to anybody.

A. No.

X-Q. 15. But I am talking about your remembering the conversation that you may have had with the public, or with some person or persons. You don't make it a practice to remember everything that anybody says to you?

A. Oh, no, of course not.

651 X-Q. 16. You couldn't possibly do that, busy as you are, and remember it for a year or so?

A. No.

X-Q. 17. You sell Camel cigarettes, of course, don't you?

A. Yes, sir.

X-Q. 18. Lots of them?

A. I should say we do.

X-Q. 19. How many of those do you suppose you send out in a week?

A. Ten or twelve thousand a week.

X-Q. 20. Do you know what is printed on a package of Camel cigarettes underneath the picture of the camel?

A. Let me see, I think it is "manufactured by the Reynolds Co." isn't it? That is, I don't know,—I may be mistaken, but I think that is what it says on the bottom. 655

X-Q. 21. You never noticed, did you?

A. Why, yes, I have noticed that there is some printing there of some kind, but whether it is on the front or back, I don't know. It is not so plain as on some cigarettes.

X-Q. 22. That name, "Reynolds" on the front, you mean?

A. Not so plain as some.

X-Q. 23. I show you a package of Camel cigarettes, and if you will examine those you will find that the name does not appear on the front of the package. 656

A. Well, I see it is not. It is on the back. I knew it was there somewhere—it is on the back.

X-Q. 24. You never noticed that it was on the back before, did you?

A. Why, no, I can't say that I did.

X-Q. 25. You never noticed what, if anything, is printed on the front of Lucky Strike cigarettes, underneath the red panel?

A. I might notice it by looking it over and forget it. I will tell you that when we get a new brand of cigarettes we generally look and see who makes it, and generally the name is on most of them. 657

X-Q. 26. But aside from some special reason for making an examination of the package you would not notice what is printed on it at all?

A. Oh, no.

X-Q. 27. And you would not be able to say, although you might be handing out 10,000 a week?

A. Sure.



658 X-Q. 28. But you would recognize a package of Lucky Strike or Camel cigarettes, instantly?

A. Yes, surely.

Mr. Hinton: That is all.

*Re-direct Examination.*

R-D. Q. 21. (By Mr. Cavanagh.) Who makes the Lucky Strike, if you know?

A. The American Tobacco Company, isn't it?

659 R-D. Q. 22. Will you state whether or not if say a dozen people a day had come into your place and inquired whether the Beech-Nut cigarette was made by the Beech-Nut gum people, that you would have recollected that fact?

A. Why, yes, I should think I would.

R D. Q. 23. Such inquiries would have been impressed on your mind?

A. Why, surely.

Mr. Cavanagh: That is all.

Mr. Hinton: That is all.

Deposition closed.

Signature waived.

Lynn, Mass., August 10, 1922.

The taking of depositions resumed at Lynn, Mass.,  
at 10.30 a. m.

Present: Same as before.

MARTIN O. CONNORS, a witness called in behalf of  
the defendant, being first duly sworn, deposes and  
says, as follows, in answers to interrogatories by  
Mr. Cavanagh:

Q. 1. Please state your name, age, residence and  
occupation.

662

A. Martin O. Connors; occupation, manager of A. S.  
Hovey Store, 17 Exchange Street, Lynn, Mass.

Q. 2. In what line of business is A. S. Hovey engaged?

A. Cigars, tobaccos, confectioneries and sodas.

Q. 3. Is this store located in a business or residential  
section?

A. In a business section.

Q. 4. Approximately, or in a general way, how many  
customers do you serve a day?

A. Probably a thousand customers a day is their  
average.

663

Q. 5. It is a pretty busy store?

A. Yes.

Q. 6. Do you handle the Beech-Nut cigarettes and the  
Beech-Nut Scrap tobacco?

A. Yes, sir.

Q. 7. Do you know who makes the Beech-Nut cigar-  
ettes, and the Beech-Nut Scrap tobacco?

A. P. Lorillard Co.

Q. 8. Do you handle Beech-Nut chewing gum?

A. Yes, sir.

Q. 9. Do you know who makes that?

664 A. The Beech-Nut Food Products Company, I imagine, is the name of the company.

Q. 10. How long have you been handling the Beech-Nut cigarettes?

A. Since their inception in this market,—let's see. I think a couple of years or so.

Q. 11. State whether or not you were ever under the impression that the Beech-Nut cigarettes and the Beech-Nut Scrap tobacco was made by the people who make the Beech-Nut gum?

A. I never knew that anybody other than just the P. Lorillard Co. made the cigarettes.

665 Q. 12. State whether or not you ever have had any customers or persons make any comments or queries as to whether the cigarettes were made by the people who make the gum?

A. I never had anybody raise the question as to the possibility that the tobacco and the food products were produced by the same concern.

Q. 13. You handle quite a bit of the Lorillard goods, do you not?

A. Yes.

Q. 14. And, so far as you know, what is the reputation of P. Lorillard Co. in the tobacco trade?

666 A. Why, their reputation ranks fully as high as any of the other different tobacco companies; I never heard their integrity questioned.

Mr. Cavanagh: That is all.

*Cross Examination.*

X-Q. 1. (By Mr. Hinton.) You are the manager of the A. S. Hovey Company?

A. The A. S. Hovey store.

X-Q. 2. Is there more than one store operated under that name?

A. No.

667

X-Q. 3. It is not a chain proposition?

A. No; it is an independent proposition.

X-Q. 4. How long have you been manager of this store?

A. I have been manager five years.

X-Q. 5. You do the buying, of course?

A. Yes.

X-Q. 6. And supervise the store?

A. Yes.

X-Q. 7. And spend a good deal of your time in that kind of work in addition to waiting on the counter?

A. I do very little waiting now. Most of my work is supervision. 668

X-Q. 8. I see. You have a good many clerks here who work under you?

A. Well, I have had, at times, 15 or more in help, clerks, and so forth,—there are 10 clerks at different times.

X-Q. 9. And the supervision and management of course takes most of your time?

A. It takes most of my time.

X-Q. 10. Mr. Connors, when a person comes in and buys cigarettes, for instance Camel cigarettes in the ordinary course, he just comes in and asks for Camel cigarettes, and puts down his money, and gets them, and walks out. 669

A. Yes.

X-Q. 11. And there isn't any discussion as to who makes the product?

A. No.

X-Q. 12. In the ordinary course you don't discuss with customers who make the various brands you sell here, do you?

A. No.

- 670 X-Q. 13. And not being a mind reader, you don't know what they think about it unless they tell you?  
A. No.

Mr. Hinton: That is all.

*Re-direct Examination.*

R-D Q. 15. (By Mr. Cavanagh.) And when they purchase gum, they just simply come in and ask for the brand of gum that they want, and put down the money, take it and go out?

- 671 A. Yes; the Beech-Nut gum,—most of my customers, the Beech-Nut customers, come in, and it is zip bang, there's your money, we punch it up, and they are gone.

Mr. Cavanagh: That is all.

*Re-cross Examination.*

R-X Q. 14. (By Mr. Hinton.) Do you ever have anybody come in and ask just for "Beech-Nut"?

- 672 A. On one occasion, I, myself, had someone step up to me at the tobacco counter and ask for Beech-Nut, and I, seeing the possibility of a little levity, paused, and repeated, "Beech-Nut"? And they said, "Cigarettes". I just gave them a chance. I felt that personally—it was a patron of mine for years,—and I didn't feel it was a person who was trying to trap me to hand them out cigarettes instead of gum or gum instead of cigarettes, and at the time I paused I was reaching for cigarettes,—and you know how customers will straighten up and look at the rack, and in that way they give us the cue of what they are asking for,—and I reached out, and just to interject a little levity, I said, "Beech-Nut"? And he said, "cigarettes".

R-X Q. 15. In your store here the chewing gum and cigarettes are on opposite sides of the store? 673

A. Yes.

Mr. Hinton: That is all.

*Re-direct Examination.*

R-D Q. 16. (By Mr. Cavanagh.) You have personally sold or served both the Beech-Nut cigarettes and the gum to customers.

A. Oh, yes.

Mr. Cavanagh: That will be all.

Mr. Hinton: That is all.

Deposition closed.

Signature waived.

674

TIMOTHY JAMES DUMAS, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. Please state your name, age, residence and occupation?

675

A. My name is Timothy James Dumas; I live 21 Moulton Street, West Lynn; place of business 68-70 Magrane Square, West Lynn.

Q. 2. What line of business are you in?

A. Cigarettes, tobacco, and gent's furnishings.

Q. 3. Besides cigarettes, tobacco, and gent's furnishings, do you sell other things?

A. Package candy and gum and magazines, newspapers, periodicals.

Q. 4. How long have you been in business here?

A. 27 years.

- 676 Q. 5. Is this a business or residential section?  
A. Well, now I call it the business section.
- Q. 6. It was a residential section once?  
A. It was, yes; it is partly now, but it is mostly business now.
- Q. 7. Approximately how many customers do you serve a day, or week?  
A. Well, I will wait on probably 2,500 people a month.
- Q. 8. Do you sell Beech-Nut cigarettes, like this exhibit package, like I show you, and the Beech-Nut Scrap tobacco?  
A. Yes, sir.
- 677 Q. 9. Who, if you know, makes those products,—or who is the manufacturer?  
A. P. Lorillard Co.
- Q. 10. Do you sell the Beech-Nut chewing gum?  
A. I do.
- Q. 11. Who makes that, if you know?  
A. Well, I can't answer that question, I am sure, right out. I suppose it is—I get it from jobbers—I suppose it is the gum company, I don't know who it would be, whether it is Wrigley's, or who it would be.
- 678 Q. 12. State whether or not you were ever under the impression that the Beech-Nut cigarettes and the Beech-Nut Scrap tobacco were made by the same people that make the gum?  
A. Well, I couldn't say about that. Well, I will tell you, I never bought any gum from Lorillard that I know of. I buy tobacco from Lorillard, but I never got any gum from Lorillard. I know I get my gum from that candy man, and lately I get my gum through the tobacco jobber; they are selling gum now.
- Q. 13. State whether or not you ever had any comments or inquiries made by customers or purchasers as to whether the Beech-Nut cigarette or the Scrap

tobacco was made by the same people who make the gum? 679

A. Well, I can state beyond a shadow of a doubt that they are made by different people.

Mr. Hinton: Objected to as a conclusion of the witness.

Q. 14. Did you ever have any inquiries made in that direction?

A. No. They come in here and get it, and of course people come in and call for Beech-Nut tobacco and Beech-Nut gum.

Q. 15. State whether or not you would confuse Beech-Nut cigarettes or Beech-Nut scrap tobacco with chewing gum? 680

A. I never had any trouble in that direction.

Mr. Cavanagh: That is all.

*Cross Examination.*

X-Q. 1. (By Mr. Hinton): You have a clothing store and you sell hats, and a good many kinds of clothing here, don't you?

A. Yes, sir.

X-Q. 2. A sort of a small department store, isn't it? 681

A. Yes.

X-Q. 3. And your tobacco and gum business is very small in comparison with the rest of your business?

A. Yes, sir.

X-Q. 4. And these 2500 customers a month, are those who purchase anything in the store, any of the dry goods and so forth?

A. Yes, sir; and tobacco and cigars.

X-Q. 5. Now, Mr. Dumas, do you remember how



682 you came to put in the Beech-Nut cigarettes? Did a man from Lorillard's, or a jobber come around here and put them in here for you?

A. Of course ever since I handled tobacco, I have got it through Manning; he is a jobber.

X-Q. 6. And his salesman came around, and you know he was a Lorillard man?

A. Yes.

X-Q. 7. And told you that they were putting out the Beech-Nut cigarettes and you put them in?

683 A. Well, I do all my business through him,—I do my business in the tobacco line through one man,—I leave it to him.

X-Q. 8. When you say you never heard any comments or remarks or had any inquiries from your customers, you mean you don't remember any?

A. I don't remember any now.

X-Q. 9. You are pretty busy in this store most of the time, are you not?

A. Yes.

X-Q. 10. And there is no reason why you should remember such comments, remarks or inquiries?

684 A. Well, if I heard any comments, I would naturally think there was something funny about it,—if I heard any comment, if I had any inkling for a moment that there was any confusion between the two companies and thought there was anything wrong, I would naturally like to know what it was,—that is what you mean?

X-Q. 11. Yes; what I wanted to know is if you made any special effort to remember any comments, remarks or inquiries that you may have heard?

A. No. At one time I was buying my gum from the candy people, and I was buying my cigarettes and tobacco from the tobacco people—

X-Q. 12. Now, just one more question. So far as you know, you can't remember any discussion whatever about that question with your customers?

A. Never heard a word about it with any of them, 685  
that I could honestly swear to.

X-Q. 13. You wait on the tobacco counter yourself  
all the time?

A. Not all the time; I have a clerk here.

X-Q. 14. But you do wait on it sometimes?

A. Yes.

X-Q. 15. I suppose in the ordinary course a man  
comes in and asks for Camel cigarettes, for instance,  
and he put his money down and takes it and walks out?

A. Sure.

X-Q. 16. And he does not ask you who makes them?

A. No.

X-Q. 17. And you don't know what he thinks about  
them as to who makes them? 686

A. No.

X-Q. 18. No way to tell, unless he told you?

A. No.

X-Q. 19. And none of your customers ever tell you  
what they think about the Beech-Nut cigarettes or any  
other cigarettes, that you can remember?

A. No.

Mr. Hinton: That is all.

*Re-direct Examination.*

687

R-D. Q. 16. (By Mr. Cavanagh): If there had been  
any remarks, or comments, extended comments by cus-  
tomers as to confusing the gum and the tobacco manu-  
facturers, you would remember it, wouldn't you?

A. I certainly should, sure.

R-D. Q. 17. And if people come in and they want to  
buy gum they usually don't hold any discussion with  
you as to who makes it?

A. No; they ask for Beech-Nut gum or Wrigley

688 Spearmint; they call for the gum that they want, and get it.

R-D Q. 18. Do you know where the store of C. A. Wilkins is located in West Lynn?

A. I do.

R-D Q. 19. It is in West Lynn here, isn't it?

A. Yes, sir.

R-D Q. 20. About how far from here is it?

A. Well, it is three-quarters of a mile.

Mr. Cavanagh: That is all.

689

*Re-cross Examination.*

R-X Q. 20. (By Mr. Hinton.) One more question: How many of these Beech-Nut cigarettes do you suppose you sell here, as a rough guess?

A. Well, I might sell five cartons a week; that is, average about five cartons a week,—that is about 50 packages a week. That is, here in this store. My other store would probably do the same.

R-X Q. 21. But you are located in this store?

A. Yes, right here.

R-X Q. 22. This is where you work?

690

A. Yes; I sell about five cartons a week of Beech-Nut cigarettes here.

Mr. Hinton: That is all.

Mr. Cavanagh: That is all

Deposition closed.

Signature waived.

691

PHILIP H. MORAN, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. Please state your name, age, residence and occupation.

A. Philip H. Moran; age 34; 30 Kirkland Street, West Lynn; proprietor of a store.

Q. 2. What kind of goods do you keep in this store, Mr. Moran?

A. Cigarettes and tobacco and tonics.

692

Q. 3. How long have you been in this place of business here?

A. About 12 years in this particular location.

Q. 4. Do you know of a store here occupied by C. A. Wilkins, in this neighborhood?

A. Yes, sir; up on the corner of Myrtle and Boston Street.

Q. 5. Do you sell the Beech-Nut cigarette and Beech-Nut Scrap tobacco?

A. Yes, sir.

Q. 6. Who makes these products, if you know?

A. The Lorillard people. I don't know the exact initials, but I know it is Lorillard.

693

Q. 7. How long have you been selling the Beech-Nut cigarettes?

A. Since they were first put on the market, very shortly after, I think the first week after the salesman came around.

Q. 8. How long ago is that, approximately?

A. Well, I don't know whether it is—I couldn't exactly say whether it is one year or five years, or ten years, but it seems to me it must be five years.

Q. 9. We are talking about the cigarettes now, and not the scrap tobacco.

694 A. Oh, about two years.

Q. 10. Do you sell the Beech-Nut chewing gum?

A. Yes.

Q. 11. Do you know whose product that is, or what concern makes it?

A. Well, I don't know,—I know it is not made by the Lorillard people. I think it is the Beech-Nut Packing Food House, or some organization like that. I have never looked at a package to see who it is. (Witness examines package of Beech-Nut gum.) I know it is not made by the Lorillard people. The Beech-Nut Packing Company, it says on here. (Witness looking at a pack-  
695 age of Beech-Nut chewing gum.) I suppose it is made by the Beech-Nut Packing Company.

Q. 12. Were you ever under the impression that the cigarettes and the scrap tobacco,—the Beech-Nut cigarettes and the Beech-Nut Scrap tobacco,—was made by the same people who make the gum?

A. No.

Q. 13. State whether or not you ever heard any customers make any comment, or inquiries, or remarks, which would lead you to believe that they were under the impression that the Beech-Nut Scrap tobacco and the Beech-Nut cigarettes were made by the Beech-Nut  
696 gum people?

A. I never had anybody question the brand. If they come in and want Beech-Nut cigarettes they specifically specify cigarettes, and if they want chewing gum they ask for chewing gum. They never make any inquiries about it; they don't care who it is made by.

Mr. Hinton: The last part of the answer is objected to as a conclusion of the witness.

Mr. Cavanagh: That is all.

*Cross Examination.*

697

X-Q. 1. (By Mr. Hinton.) You say the people come in and ask for Beech-Nut cigarettes, and others come in and ask for Beech-Nut gum?

A. Yes, sir.

X-Q. 2. Did you ever have anybody ask for just "Beech-Nut"?

A. I don't believe I ever did; I can't recall it.

X-Q. 3. Do you spend all your time here?

A. The biggest part of the time here.

X-Q. 4. This is a one-room store, and you run a pool room in addition to it in back?

698

A. Yes.

X-Q. 5. And a lunch counter?

A. Yes; a little bit of everything.

X-Q. 6. Now, you have been selling these Beech-Nut cigarettes approximately for two years?

A. Yes, sir; I would say two years. In fact ever since they were put on the market.

X-Q. 7. And you don't remember any customer ever having asked you any questions about who made them, or anything of that kind?

A. No, they never did.

X-Q. 8. When you say they never did; you mean you don't remember it?

699

A. I think I can truthfully say that they never did.

X-Q. 9. Would you make any special effort to remember it,—did anybody ever ask you to make a note of such questions?

A. No, they didn't.

X-Q. 10. Or anything of the kind?

A. No. Of course when the salesman comes in selling them; of course, they are naturally interested in knowing who made the cigarettes,—at least I was, and I found who made them, the Lorillard people.

700 X-Q. 11. When you put in the Beech-Nut cigarettes, did the jobber, or the Lorillard agent come in and get you to put them in?

A. I believe the agent came in first.

X-Q. 12. He came in first and told you they were coming out with a new kind of cigarettes and that you better put them in?

A. Yes, he asked me if I would put in some at the time.

X-Q. 13. And of course you knew who made them?

A. Yes; I presume that everybody knew who made them.

701 X-Q. 14. That is not based on anything anybody told you?

A. No; that is just my supposition.

X-Q. 15. You knew yourself?

A. Yes, sir.

X-Q. 16. When a man comes in to buy Camel cigarettes, or other brands of cigarettes, he comes in and puts his money down and takes the goods and walks out?

A. Yes.

X-Q. 17. And you don't have any discussion with him as to who makes the Camel cigarettes?

702 A. I don't know who makes them. I give him the brand he calls for. I am interested in making the sale, that is all I am interested in, the sale of them.

X-Q. 18. Do you know who makes the Camel cigarettes?

A. Yes.

X-Q. 19. Who makes the Camels?

A. The American Tobacco Company.

X-Q. 20. Who makes the Fatimas?

A. Why, I don't know; I think they are made by the same house, I wouldn't say; I don't know exactly.

X-Q. 21. Do you know who makes the Lucky Strike?

A. No; I was under the impression that the American Tobacco Company did. 703

X-Q. 22. You are not sure who makes some of these most popular brands?

A. Yes. I know some of them, but there are some I don't know.

Mr. Hinton: That is all.

*Re-direct Examination.*

R-D. Q. 14. (By [Mr. Cavanagh.] When customers come in and want chewing gum, do they have any discussion with you as to who makes the gum? 704

A. No; they never ask; they just come in and say chewing gum,—a package of Beech-Nut chewing gum, or Spearmint Chewing gum. They always use the words "chewing gum."

Mr. Cavanagh: That is all.

*Re-cross Examination.*

R-X Q. 23. (By Mr. Hinton.) How many of these Beech-Nut cigarettes do you suppose you sell a week, approximately,—of course you don't know exactly? 705

A. Oh, I should say 600 cigarettes,—about 60 packages.

R-X. Q. 24. About 60 packages?

A. Yes, sir.

Mr. Hinton: That is all.

Deposition closed.

Signature waived.



706

JOHN J. LECOLST, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answers to interrogatories by Mr. Cavanagh:

Q. 1. What is your full name?

A. John J. LeColst.

Q. 2. Where is your place of business?

A. Right here.

Q. 3. What is the address?

A. 747-1/2 Western Avenue, West Lynn.

707

Q. 4. What line of business is this, what do you sell?

A. Well, cigars and tobacco and periodicals and stationery, and different things.

Q. 5. How long have you been in business?

A. Well, going on 30 years.

Q. 6. How long have you been in this store?

A. In this store, it will be six years next month; but I have been in business around West Lynn longer than that.

Q. 7. This store is in West Lynn, is it?

A. Yes, sir.

708 Q. 8. You sell Beech-Nut Scrap tobacco and the Beech-Nut cigarettes?

A. Yes.

Q. 9. Do you know who those are made by, the manufacturer?

A. Well, I suppose—I know the Beech-Nut cigarettes are made by the Lorillard Company, and the tobacco, the Scrap tobacco, the Lorillard man was around, he was the first man that brought it around.

Q. 10. Do you sell Beech-Nut chewing gum?

A. Yes, sir.

Q. 11. Do you know who makes that?

A. Well, the Beech-Nut gum—I don't know exactly

who makes it,—the Beech-Nut Company, I suppose. I 709  
don't know the name of the company.

Q. 12. Can you state whether or not you were ever  
under the impression or thought that the Beech-Nut  
cigarettes or the Beech-Nut Scrap tobacco were made by  
the same people that make the gum?

A. No; I was always of the impression that Lorillard  
made the tobacco and cigarette, and the Beech-Nut  
people made the gum.

Q. 13. Did you ever hear any remarks, or comments,  
or inquiries from any of your customers here that would  
lead you to the impression that they thought that the  
Beech-Nut cigarettes and Beech-Nut Scrap tobacco were 710  
made by the same people who make the Beech-Nut  
chewing gum?

A. I never heard that remark, no.

Q. 14. Approximately how many customers do you  
serve a day or week here, just as a general thing?

A. Well, between three and four hundred.

Q. 15. A day?

A. Yes; according to my register there, between  
three and four hundred. Sometimes there is more,—  
some particular Saturday it runs probably up to five  
hundred. That is the sales. Of course I take the register  
every night. . 711

Mr. Cavanagh: That is all.

*Cross Examination.*

X-Q. 1. (By Mr. Hinton.) Mr. LeColst, you have  
been in the tobacco selling business for 30 years?

A. Going on 30 years. . There were two years that  
I was out. I was in the wholesale liquor business at  
the time they had a license here; two years I was out.

X-Q. 2. And you have in the course of that time dealt  
in a great many Lorillard products?

712 A. Yes.

X-Q. 3. And you say that you supposed the scrap tobacco was a Lorillard product because it was brought in here by a Lorillard agent?

A. Yes.

X-Q. 4. And did the Lorillard man bring around the Beech-Nut cigarettes when they first came out?

A. Yes; it was a Lorillard man,—that is, he said he was from Lorillard's. In fact I knew him by sight. I knew all the old timers, but they are changing all the time, and the new fellows I don't know.

713 X-Q. 5. And there was no doubt in your mind after that that the Beech-Nut cigarette was a product of the Lorillard Company?

A. No. In fact before I ever had any Beech-Nut cigarettes Donahue told me that Lorillard was putting out the cigarette. Donahue is a dealer, a jobber in Lynn, the biggest jobber in Lynn. He gets the bulk of my business; him and I are old friends, we were old friends. Mr. Donahue is dead now.

X-Q. 6. Now, when you say you never heard any remark made by your customers, you mean you don't remember any?

A. I don't remember any.

714 X-Q. 7. How long have you been selling Beech-Nut cigarettes?

A. Well, I couldn't tell exactly the day when they came around. I was the first one that had it, but I never paid any attention to the date.

X-Q. 8. About a year and a half ago?

A. Yes; when they first introduced them in Lynn.

X-Q. 9. You never made any special effort to remember any discussion you might have had about them with customers?

A. No.

Mr. Hinton: That is all.

715

Mr. Cavanagh: That is all.

Deposition closed.

Signature waived.

Stipulation in re THOMAS E. BLAKE'S Deposition.

It is hereby stipulated by and between counsel for the parties that if Thomas E. Blake of 625 Boston Street, West Lynn, Massachusetts, was called as a witness in this case, he would testify as follows:

My name is; Thomas E. Blake, address 625 Boston Street, West Lynn, Massachusetts; of lawful age; occupation, grocer, and I also sell tobacco products, confectionery, candies and gum. I sell the Beech-Nut cigarettes and also the Beech-Nut chewing gum. I know the Beech-Nut cigarettes are a product of the P. Lorillard Co., and the same have been advertised by posters placed in my windows. I never had any customers or persons ask me whether the Beech-Nut cigarettes were made by the same people as make the gum, and I never heard any comments or inquiries made by a customer in this respect. My store is directly across the street from the store of Mr. C. A. Wilkins.

716

717

On cross-examination the witness will testify: I do not sell many Beech-Nut cigarettes and I do not make a practice of discussing with customers the question of who makes the various products I sell. I have been selling Beech-Nut cigarettes ever since they came out, and when I say that I have had no comments, remarks or inquiries about them, I mean that I do not remember any at the present time. There was no reason for me to make any attempt to remember such comments, remarks, or inquiries, nor have I made any such attempt

718 to remember them in the ordinary course of business. My store is a small one-room store, operated by myself with the assistance of my wife and a boy. It is a residential store.

It is stipulated by and between counsel that the C. A. Wilkins store mentioned in the above stipulated deposition of Thomas E. Blake, as the store directly across the street from the Blake store is the C. A. Wilkins who was called as a witness in behalf of the plaintiff in the above entitled case.

719

Salem, Mass., 2.30 p. m.

EDWARD ADELMAN, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. What is your full name, Mr. Adelman?

A. Edwin Adelman.

Q. 2. Address?

A. Home address?

Q. 3. Yes.

A. 247 Lafayette Street, Salem, Mass.

720

Q. 4. And your occupation?

A. Proprietor.

Q. 5. Proprietor of what kind of a store?

A. Cigar store.

Q. 6. Where is this store located?

A. 127 Washington Street, Salem, Mass.

Q. 7. How long have you owned this store here?

A. This store,—I have owned it since the first of April, 1922.

Q. 8. How long have you been in the tobacco business, approximately?

A. Well, I have been in the tobacco business since 1903. 721

Q. 9. Do you sell the Beech-Nut cigarette, like that exhibit package which I show you?

A. Yes, sir.

Q. 10. And do you also sell the Beech-Nut scrap tobacco?

A. Yes, sir.

Q. 11. Do you know who manufactures those two products?

A. The Lorillard Company.

Q. 12. Do you sell the Beech-Nut chewing gum?

A. Yes, sir. 722

Q. 13. Do you know whose product that is?

A. The Beech-Nut Packing Company.

Q. 14. Were you ever under the impression, or did you ever think that the Beech-Nut cigarette or the Beech-Nut Scrap tobacco was made by the same people who make the gum?

A. No, sir.

Q. 15. In your experience in the tobacco business in stores have you ever heard any comments or any inquiries from customers or others which would lead you to believe that they were under the impression that the same concern that made the gum made the Beech-Nut cigarettes? 723

A. No. I have had people ask me, "Is it made by the same company?" But they were not impressed that it was. In fact the name on the cigarette, or in the advertising I have seen always had the name Lorillard on it.

Mr. Hinton: The witnesses' statement as to the impression of the people who asked him the question referred to is objected to as a conclusion of the witness, and the last part of the answer objected to as volunteered.

724 Q. 16. State whether or not you ever sold the Beech-Nut cigarettes or the Beech-Nut Scrap tobacco to customers as the product of the Beech-Nut Packing Company?

A. No.

Q. 17. State whether or not you have ever had any customers ask you for Beech-Nut cigarettes or Beech-Nut Scrap tobacco made by the Beech-Nut Packing Company?

A. No, sir.

Q. 18. So far as you know, what reputation has the Lorillard Company in the tobacco business?

725 A. One of the best; they have as good a reputation as any of them and, personally, I like the Lorillard Company to do business with better than any of the others.

Q. 19. Mr. Adelman, did you ever know a young man by name of Edward Moscovitz?

A. Yes, sir.

Q. 20. Did he ever work in this store?

A. He worked in this store, but he didn't work for me; he worked in this store before I took charge.

Q. 21. Who owned this store before you took charge?

726 A. The Bieringer-Hanauer Company; it ran under the name of "Schryver's Segar Store",—it was run by Bieringer-Hanauer, and then they changed the name to the Schryver Segar Store.

Q. 22. Did you work in the store at that time?

A. No, I worked in this store before the Beech-Nut cigarette came out.

Mr. Cavanagh: I think that is all.

*Cross Examination.*

X-Q. 1. (By Mr. Hinton) You say you have been in the tobacco business some time before you took this store?

A. Yes, sir.

727

X-Q. 2. Where were you located?

A. Well, I went to work for the United Cigar Stores Company, I believe it was 1903, and I was with them about five or six years, and then I was with the American Tobacco Company in 1910-11, and then I was with the United Cigar Stores again for, I don't remember the year exactly, but for another year, and then I went back with the American Tobacco Company again, and after that I went with Bieringer-Hanauer Company, and I was with them about four years, until I took charge of this stand on the corner of Essex and Washington Street, Salem, Mass. I ran that stand for myself, the Cigar end of it, until we sold out to Shulte Co., and then I bought this store. 728

X-Q. 3. This is a United Cigar Store that you are operating here?

A. No, sir; this is my own store, operating the United agency; I have the agency for the United Cigar Stores, selling their brands.

X-Q. 4. And you have been in the tobacco business and intimately associated with the various big companies in the business for a great many years, haven't you?

A. Yes; a great many years.

729

X-Q. 5. That is either employed by big tobacco companies or—

A. Yes; in the tobacco business practically all my life.

X-Q. 6. Did you handle the Beech-Nut cigarettes prior to the time you came to this store?

A. Yes.

X-Q. 7. Where were you then?

A. On the corner.

X-Q. 8. Did you put them in there yourself?

A. What do you mean?



730 X-Q. 9. Did you buy them, introduce them in the store?

A. Did I introduce them? They were introduced to me.

X-Q. 10. And who did that?

A. As near as I can remember, the jobber salesman.

X-Q. 11. He came around and told you that it was a new cigarette, and he wanted you to put them in, and you took some of them?

A. No. I don't put in any cigarette that comes along, I want to know who makes them, and if I know that there is a reliable company back of them, I buy some.

731 X-Q. 12. Yes; and he told you at that first interview about the Beech-Nut cigarettes, that the Lorillard Company was putting them out?

A. Yes.

X-Q. 13. Of course you were in doubt about them up to that time?

A. No, I was not in doubt about them. In fact Mr. Belt was here and told me about them.

X-Q. 14. Who is Mr. Belt?

A. I don't know what position he holds with the Lorillard Company.

732 X-Q. 15. But he is one of their men, one of their vice presidents?

A. I don't know what position he holds.

X-Q. 16. A very high position he holds in that company, doesn't he?

A. Yes, I think so, but that was two or three months after I had them in; I guess he was making a trip through this part of the country, and I had known about them before,—put them in before I had met him.

X-Q. 17. Now, how many customers do you suppose ever asked you whether the Beech-Nut cigarettes were made by the gum people?

A. I don't think there was over one or two that I had any talk with about them. 733

X-Q. 18. That is, you didn't have any discussion on that subject with any of your customers except perhaps one or two?

A. That is all. In getting a new cigarette to sell, of course you introduce a new cigarette to a customer, or you will never sell them,—do you know what I mean? A new product, Beech-Nut gum, for instance, if it is something new, you would have to tell them about it, how good it was; and so with the Beech-Nut cigarette, you would have to introduce them to the customer, and in the general talk a great many times they asked: "who makes them?" But there was never any doubt in the customer's mind, so far as I know, that it was not the Beech-Nut Packing Company that made them, because I would never think of the Beech-Nut Packing Company making cigarettes, because I know that they are not in the cigarette game. 734

Mr. Hinton: The last part of the answer is objected to as volunteered testimony.

A. (Continued.) Of course that is my experience, being in the tobacco business, knowing the sales as I do. 735

X-Q. 19. That is, being so intimately acquainted with the business that you have followed all your life you would not think that, naturally?

A. Yes; I don't mean a stranger in that line,—I don't know anything about what they might think, but I don't think they would.

X-Q. 20. You don't know what someone not connected with the tobacco business might think?

A. Yes.

X-Q. 21. All you know is what you think yourself?

A. Yes.

736 X-Q. 22. Now, I wonder if you can tell me what is printed on that Lucky Strike package (indicating a package of Lucky Strike cigarettes) underneath the red panel with the words "Lucky Strike", under the name "Lucky Strike"?

A. "It is toasted." "The American Tobacco Company." I can't tell now whether it says, "Manufactured by", or not, but I know that the American Tobacco Company's name is on there.

X-Q. 23. On the front?

A. Yes.

737 X-Q. 24. What is printed on the Camel cigarettes underneath the picture of the Camel, on the front, do you know?

A. It is the R. J. Reynolds Co.

X-Q. 25. That is, underneath the picture of a Camel on front of the package?

A. Yes.

X-Q. 26. As a matter of fact you knew that the American Tobacco Company made the Lucky Strike cigarette, and that the R. J. Reynolds Company made the Camel cigarette.

A. Yes.

738 X-Q. 27. And that is why you assume that those names are printed on the front of the packages?

A. Yes.

X-Q. 28. But you have no definite picture in your mind of what might be there?

A. No.

X-Q. 29. For instance, I call your attention to a package of Camel cigarettes, and you find, do you not, that the name you mentioned is not in the place you thought it was?

A. Well, I said that because I thought it was. I really would not gamble on it, on that particular thing.

X-Q. 30. Now, how many packages of Camel cigarettes do you hand out in the course of a week, do you suppose,—just a rough guess? 739

A. Well, me, personally, do you mean?

X-Q. 31. Yes.

A. I will tell you: We wait on about 400 customers on an ordinary day, and I don't think that I wait on more than 150 of that 400, because I have two men; but I should say on the Camels that I might hand out 50, and I might hand out 10 packages a day.

X-Q. 32. And Lucky Strike about the same?

A. Yes, I should think so.

X-Q. 33. If I understand you, in introducing a new cigarette you find it a very persuasive argument to the customer to tell him that it is made by some reputable concern, who makes other well-known brands, and you mention the name of the concern as a rule? 740

A. No, we don't mention any concern's name as a rule. We mention that it is a reputable concern, why you might say, "The same people that make—" mentioning another cigarette, saying, for instance, "Made by the same people who make the Turkish Trophies, or the same people who make the Murad".

X-Q. 34. In other words, if you can assure him that it is a reputable concern of high standing that makes the product, and mention another product made by the same concern, it helps the sale? 741

A. Yes, sir.

X-Q. 35. And he is apt to have a favorable opinion of this product of the concern that makes the other product?

A. Yes; we usually use that as an argument.

Mr. Hinton: That is all.

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*Re-direct Examination.*

R-D Q. 23. (By Mr. Cavanagh.) When you were introducing the Beech-Nut cigarette, what did you tell the customers as to the concern that made it and the brands that they made?

A. You mean what reputation they had?

R-D Q. 24. Yes; what concern did you tell them was making it?

743 A. I told them the Lorillard Company, because the Lorillard Company makes a great many brands that you might call popular brands, salable brands, high grade brands. I might mention Helmars, Murads, and Moguls,—that the Beech-Nut cigarettes were made by the concern that makes those brands. They have been on the market so long that it has a lot of weight.

R-D Q. 25. Then you don't introduce a new cigarette brand, or a new tobacco product on the reputation of chewing gum people, do you?

A. No, sir.

Mr. Hinton: Objected to as leading.

744 R-D Q. 26. State whether or not in your business that you would introduce to your customer a new cigarette brand, or chewing tobacco on any chewing gum concern's reputation?

A. No.

R-D Q. 27. Will you please state whether or not in your mind there would be any confusion between tobacco products, such as cigarettes and scrap tobacco, and chewing gum?

A. There would be no confusion in the mind.

R-D Q. 28. You sell the Beech-Nut chewing gum here, do you not?

A. Yes.

R-D Q. 29. State whether or not you have ever had any customer come in and ask you for Beech-Nut chewing gum, and on the strength of that inquiry you have given him Beech-Nut tobacco or Beech-Nut cigarettes, in the place of the gum? 745

A. No, sir.

Mr. Cavanagh: That is all.

Mr. Hinton: I have nothing further.

Deposition closed.

Signature waived.

JOHN T. POWERS, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh: 746

Q. 1. What is your name, age residence, and occupation?

A. John T. Powers; 29 years; 79 Highland Avenue, Salem, Mass.; manager of this establishment.

Q. 2. What business is this establishment,—where is it located?

A. Cigar business, tobacco business, located at 222 Essex Street, Salem, Mass. 747

Q. 3. How far is it from the Adleman United Agency Store, Adleman's store, 127 Washington Street?

A. Oh, about 300 yards, I should think.

Q. 4. How long have you been in business here, Mr. Powers?

A. It is going on four years.

Q. 5. Do you sell Beech-Nut cigarettes and Beech-Nut Scrap tobacco?

A. We certainly do.

748 Q. 6. Who manufacturers the Beech-Nut cigarette and the Beech-Nut Scrap tobacco?

A. P. Lorillard Co.

Q. 7. Do you sell Beech-Nut chewing gum?

A. Yes. We had some mints, but they are almost gone now.

Q. 8. Who makes the Beech-Nut gum, if you know?

A. If I remember right, some packing company out in Canajoharie, New York.

Q. 9. State whether or not you ever thought or were under the impression that the Beech-Nut cigarettes or the Beech-Nut Scrap tobacco was made by the gum

749 people?

A. No, I never was under that impression. They are two separate concerns, as I understand.

Q. 10. State whether or not you ever had any inquiries, or ever heard any comments or remarks made by customers or others that would lead you to believe that they were under the impression that the Beech-Nut Packing Company, or the gum company, made the Beech-Nut cigarettes and the Beech-Nut Scrap tobacco?

A. Not to my knowledge.

Q. 11. You never heard of any such inquiry, did you?

A. No.

750 Q. 12. How many customers approximately do you serve a day here, in a general way?

A. About 600.

Q. 13. It is a pretty busy corner here?

A. Yes.

Q. 14. How long have you been selling Beech-Nut cigarettes?

A. Well, I have sold them for a long time, I guess ever since they came out. I can't just remember. I now we have handled them ever since they were manufactured, I guess.

Mr. Cavanagh: I think that will be all.

*Cross Examination.*

751

X-Q. 1. (By Mr. Hinton.) You are here by yourself in the store?

A. With a clerk.

X-Q. 2. And you make 600 sales a day?

A. Pretty nearly, approximately.

X-Q. 3. And I suppose in the ordinary course if a customer comes in to buy, for instance, cigarettes, and he asks for Camels, he takes the goods and puts down his money and walks out, and there is no conversation one way or the other; is that the case?

A. It depends on the customer. If I knew him quite well I might talk with him, we might pass the time of day,—is that what you mean? 752

X-Q. 4. Yes. Of course you would pass the time of day. But in the ordinary course you would not discuss with the customer who manufactured Camel cigarettes,—he would ask for them and take the goods and pay for them and go out?

A. I imagine so; the average customer.

X-Q. 5. Did you make any special effort to make a note, or to remember any inquiries you may have had in connection with the Beech-Nut cigarette?

A. Why would I do that?

X-Q. 6. That is what I am asking you. Did you? 753

A. No.

X-Q. 7. Nobody asked you to make a note of any inquiries that you may have received and remember who asked you the questions?

A. What do you mean, regarding these here questions?

X-Q. 8. Yes.

A. No.

X-Q. 9. There is no reason why you should remember for a year and a half or two years any comments or re-



754 marks about the Beech-Nut cigarette that may have been made in the store?

A. I don't know of any reason why I should remember it; it had nothing to do with me.

X-Q. 10. You wouldn't have paid any attention to it one way or the other?

A. I don't imagine I would.

X-Q. 11. When you say that no such comments and remarks were made, what you mean is, you don't remember?

A. Not to my knowledge.

755 Mr. Hinton: That is all.

*Re-direct Examination.*

R-D. Q. 15. (By Mr. Cavanagh.) State whether or not if ten or fifteen people came in and asked you if Beech-Nut cigarettes were made by the same people that made the gum, you would not have remembered that?

A. Well, I suppose if they made it very plain and definite that I naturally would remember it. Anybody would remember it, I think.

756 R-D. Q. 16. If a stream of people had been coming in and asking you if Beech-Nut cigarettes were made by the same people who made the gum, you would have remembered it?

A. I think I would; I think anybody with any sense of reason would have remembered anything of that description.

Mr. Cavanagh: That is all.

Mr. Hinton: Nothing more.

Deposition closed.

Signature waived.

757

DENNIS T. O'CALLAHAN, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. Please state your name, age, residence and occupation?

A. Dennis T. O'Callahan; age 46; residence, 6 Larchmore Road, Salem.

Q. 2. Occupation?

A. Salesman.

Q. 3. For what concern are you a salesman?

A. W. P. Radford & Company.

Q. 4. What is the business address of that concern?

A. 159-163 Washington Street, Salem.

Q. 5. How far is that from the United Cigar Stores?

A. Oh, I should say 100 yards. They are right up the street, you see.

Q. 6. Do you know the name of the man who runs that store?

A. Yes, sir; Adelman.

Q. 7. And that is 127 Washington Street?

A. Yes.

Q. 8. How long have you been in the tobacco business?

A. 20 years.

Q. 9. Does this Radford store here handle the Beech-Nut cigarette and Beech-Nut Scrap tobacco?

A. We do, sir.

Q. 10. Do you know what concern is the manufacturer of the Beech-Nut cigarette and the Beech-Nut Scrap tobacco?

A. P. Lorillard Co.

Q. 11. Do you handle Beech-Nut gum in this store?

A. We do not, sir.

Q. 12. You don't sell anything but tobacco?

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760 A. Well, we handle some other gums, but no Beech-Nut gum.

Q. 13. Do you know who makes the Beech-Nut gum?

A. No; I suppose it is that Beech-Nut Packing Company, so far as I know.

Q. 14. Can you state whether or not you were ever under the impression that the Beech-Nut cigarette or the Beech-Nut Scrap tobacco were made by the same people that make the Beech-Nut gum?

A. Never under that impression, sir; I always knew who made them.

761 Q. 15. In your experience can you state whether or not you have to your own knowledge ever heard any inquiries, remarks or comments by customers that would lead you to the impression that they thought the Beech-Nut gum people made the Beech-Nut cigarette?

A. I have heard people make inquiries into that you know, whether or not the Beech-Nut cigarettes and tobacco and the gum and the other Beech-Nut fruit products were all one and the same, and I tried to tell them the difference.

Q. 16. Well, can you give us an incident of that talk? Did you have any conversation with any one about it?

762 A. I can tell you one incident, one particular incident I remember. A man employed by the Beech-Nut Food Products, and who was in conversation with Mr. Radford, and they conferred with me relative to this same question, whether or not people had the impression that their goods and our goods were lined up with one another.

Q. 17. Did you take part in that conversation?

A. Yes.

Q. 18. What did you say?

Mr. Hinton: Objected to as irrelevant.

A. So far as I know I told them at the time, any one 763  
I had conversation with that the Beech-Nut Food Products and the Beech-Nut cigarettes and tobacco were different and separate products, made by separate firms. I told them there was no confusion about it.

Mr. Hinton: Objected to as conclusion.

Q. 19. You told them that?

A. I told them that, the parties that were in the store talking. That was some time back.

Mr. Cavanagh: I think that is all.

764

*Cross Examination.*

X-Q. 1. (By Mr. Hinton.) You have been in the tobacco business 20 years?

A. Yes, right here.

X-Q. 2. Wholesale and retail?

A. Yes, sir.

X-Q. 3. And you don't sell the Beech-Nut gum, never sold it

A. No. I know I have often had calls for it on the outside, and I guess we have tried to get it.

X-Q. 4. Now, how many people do you suppose you have discussed this question with as to who makes the Beech-Nut cigarette and the Beech-Nut chewing gum? 765

A. I think about a half a dozen. It would be only in conversation, you know. Sometimes some one would be talking and the question would be brought up, and they would leave it to me as a tobacco man to decide, and I would try to tell them, so far as I knew, that there was a distinction between the parties who made the food products and the Beech-Nut tobacco products.

X-Q. 5. And you would settle the matter for them?

A. I would as best I could to their satisfaction.

766 X-Q. 6. And that is all the discussion you ever had on this question, with half a dozen people, who left it to you to decide that question?

A. Yes; and, as I told Mr. Madden the other day, I have eaten Beech-Nut bacon, and it is good stuff, and I always have a good word for it at any time.

Mr. Hinton: That is all.

*Re-direct Examination.*

767 R-D Q. 20. (By Mr. Cavanagh.) State whether or not you ever told anybody that the Beech-Nut gum was manufactured by the same people that made the Beech-Nut cigarettes and the Beech-Nut Scrap tobacco?

A. No.

R-D Q. 21. What concerns did you tell them made the Beech-Nut cigarettes and the Beech-Nut Scrap tobacco?

A. I told them that the P. Lorillard Co. made them.

Mr. Cavanagh: That is all.

*Re-cross Examination.*

768 R-X Q. 7. (By Mr. Hinton.) Do you remember, Mr. O'Callahan, whether you ever had the impression that the Beech-Nut people and the Lorillard people were a part of the same crowd?

A. No. When the Beech-Nut cigarettes first came on the market,—and of course you would—and I took a package and looked at it to see who it was made by, and when I saw "P. Lorillard Co." on the package that satisfied me, and I never confused them. I could see their name on the cigarettes, and on the tobacco, and I could see the name of the Beech-Nut Packing Company on the Beech-Nut products. I know I ate that bacon a great many years ago, before we

handled Beech-Nut cigarettes, or Beech-Nut chewing gum; I would see those products in the store, and I would try them, and I would buy them again. 769

R-X Q. 8. You never were under the impression or told anybody that the two companies had some sort of a connection with each other?

A. Never; and those who inquired about it, I tried to tell them the difference,—I tried to tell them that the Beech-Nut Packing Company and P. Lorillard Company were two different and distinct companies, that one made the Beech-Nut Scrap tobacco and the Beech-Nut cigarettes and that the other made food products.

Mr. Hinton: That is all.

Mr. Cavanagh: That is all.

Deposition closed.

Signature waived.

770

(Adjournment taken to Friday, August 11, 1922, to meet at Room 401, Exchange Building, Boston, Massachusetts, at 10.00 a. m.)

Lawrence, Mass., August 12, 1922.

The further taking of depositions resumed at Lawrence, Mass., at 10 a. m.

Present as before.

771

THOMAS J. MAGUIRE, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. (By Mr. Cavanagh.) What is your name?

A. Thomas J. Maguire.

Q. 2. And your occupation?

A. Well, news dealer and tobaccoist.

Q. 3. Where is your place of business located?

- 772 A. 24 Amesbury Street, Lawrence, Mass.  
Q. 4. Are you the proprietor of this store?  
A. Yes, sir.  
Q. 5. How long have you been in the business?  
A. 17 years the first of this October.  
Q. 6. How long have you been located at this place?  
A. 17 years.  
Q. 7. Been here ever since you opened up business?  
A. Yes, sir.  
Q. 8. Do you sell the Beech-Nut cigarette?  
A. I do.  
Q. 9. Do you also sell the Beech-Nut Scrap tobacco?  
773 A. No.  
Q. 10. Do you know what concern makes the Beech-Nut cigarette?  
A. Yes.  
Q. 11. What concern?  
A. Lorillard.  
Q. 12. And do you also sell any Beech-Nut gum?  
A. Yes.  
Q. 13. Do you know what concern makes that?  
A. Yes.  
Q. 14. What concern?  
A. The Beech-Nut Packing Company.  
774 Q. 15. Were you ever under the impression that the Beech-Nut cigarette was made by the same people that made the Beech-Nut gum?  
A. No.  
Q. 16. Will you state whether or not you are constantly on duty here in the store?  
A. Practically 16 hours every day, seven days every week.  
Q. 17. Would you state whether or not you ever had any customers or others ask any questions, or make any comments or inquiries which would lead you to believe

that they thought that the Beech-Nut cigarette was made by the same people that made the gum? 775

A. No; never had any suggestions in regard to that.

Q. 18. What, so far as you know in your business, is the reputation of P. Lorillard Co.?

A. Why, the very best.

Q. 19. Mr. Maguire, do you know who keeps the grocery right across the alley here?

A. Yes.

Q. 20. Who?

A. M. J. Bailey.

Q. 21. And about what is the number of that Bailey store? 776

A. It would be 34 Amesbury Street.

Q. 22. About how many yards from your place of business is the Bailey store?

A. 25 at the most,—between 20 and 25, 25 at the most.

Q. 23. Practically the next door?

A. Practically the next door,— only three doors below.

Q. 24. Will you state whether or not you ever knew a party named Craven working for M. J. Bailey, grocer, of Lawrence?

A. Yes; James Craven,—I know him well. 777

It is stipulated between counsel that James Craven referred to by the witness is working in the Bailey grocery store, next door to witness' place of business, that he is the same James Craven of Lawrence who testified as a witness on behalf of the Beech-Nut Packing Company.

Mr. Cavanagh: That is all.



778

*Cross Examination.*

X-Q. 1. (By Mr. Hinton.) You work alone in your store, do you, Mr. Maguire?

A. I am alone while I am here.

X-Q. 2. You sometimes have someone to help you?

A. My wife comes in the afternoon at 3 o'clock.

X-Q. 3. Do you have, Mr. Maguire, people come in and ask just for "Beech-Nut", without saying whether they want the gum or cigarettes?

A. No, sir.

X-Q. 4. You remember that they do not?

779

A. No, they do not.

X-Q. 5. When did you first put in the Beech-Nut cigarettes?

A. So far as I know, it was when they first came on the market; I don't remember just when it was.

X-Q. 6. And that was about a year ago?

A. It was fully a year ago.

X-Q. 7. Who put them in for you, do you remember?

A. Well, I can't recollect whether — I know I ordered them through Mr. Hayes, my jobber. I would not put them in until I had constant call for them. That is my rule, not to put in any goods until I have a call for them.

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X-Q. 8. But they were brought to you by the jobber before you put them in?

A. I couldn't say about that, sir; I have no recollection of anything of that kind.

X-Q. 9. Now, were you asked to make an attempt to make a note of or remember any comments, remarks, or inquiries that may have been made by customers?

A. No, sir.

X-Q. 10. There is no reason why you should try to remember any incidental remarks that customers made to you when they purchased the goods, is there?

A. No, not particularly.

X-Q. 11. And you made no effort to do so?

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A. No; they would ask for the goods, and I would sell them to them.

X-Q. 12. In other words they would ask, for instance, for Camel cigarettes, and they would get Camel cigarettes and walk out?

A. Yes, sir.

X-Q. 13. Or they would come in and ask for Beech-Nut cigarettes, and get them, and walk out, without having any conversation with you, in regard to who made them?

A. Yes.

X-Q. 14. You can't remember any such conversation?

782

A. No.

X-Q. 15. Mr. Maguire, you are acquainted with Mr. Craven?

A. Yes.

X-Q. 16. He is an honest man, so far as you know, and you would believe him under oath?

A. Yes.

Mr. Hinton: I think that is all.

*Re-direct Examination.*

R-D. Q. 25. (By Mr. Cavanagh.) Mr. Maguire, will you state whether or not if daily or weekly customers had come in and inquired whether or not the Beech-Nut cigarette was made by the same people that made the Beech-Nut gum, you would have remembered such inquiries?

783

Mr. Hinton: Objected to as leading.

A. I think that I would remember it.

Mr. Cavanagh: That is all.

784

*Re-cross Examination.*

R-X Q. 17. (By Mr. Hinton.) Mr. Maguire, how many of these Beech-Nut cigarettes do you sell here a week, approximately?

A. Probably about 20 cartons a week, 200.

R-X Q. 18. Twenty cartons a week?

A. Yes, sir.

R-X Q. 19. Is that about what you have been selling since they came out, about 20 cartons a week to your customers?

A. Yes.

785 R-X Q. 20. About how many Camels do you sell a week, approximately?

A. Oh, I sell 2,000 camels a week. Camels, of course, are the best sellers in the market.

Mr. Hinton: That is all.

*Re-direct Examination.*

R-D Q. 26. (By Mr. Cavanagh.) About how many customers do you serve here in a day, approximately?

A. At a very low estimate, 700.

786

R-D Q. 27. This store is near one of the main streets of Lawrence?

A. Yes, sir; it is near the main street.

Mr. Cavanagh: That is all.

Mr. Hinton: That is all.

Deposition closed.

Signature waived.

PETER PETERS, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. (Mr. Cavanagh) What is your full name?

A. Peter Peters.

Q. 2. Your age, Mr. Peters?

A. About 42.

Q. 3. What is your occupation, your business?

A. Store keeper.

Q. 4. What sort of goods do you sell?

A. Candy, tobacco and fruit, groceries, tonic, you know—soft goods. 788

Q. 5. Do you sell the Beech-Nut cigarettes?

A. Yes, sir.

Q. 6. Do you sell any Beech-Nut scrap tobacco?

A. No, not now. I used to sell it before.

Q. 7. Do you know who makes the Beech-Nut cigarettes?

A. Yes.

Q. 8. Who makes it?

A. Leroyd or Alroyd, or Ralroid,—I don't know how to spell the name.

Q. 9. You don't know how to spell the name?

A. I don't know how to spell the name, but it is right on the package, anyway. 789

Q. 10. Do you know who makes the Beech-Nut gum?

A. Sure.

Q. 11. Who?

A. Beech-Nut Packing Company; their name is all marked on the package.

Q. 12. Will you state whether or not you were ever under the impression that the Beech-Nut cigarettes were made by the same people that make the Beech-Nut gum?

A. No; it is a different company, anyway.

790 Q. 13. Will you state whether or not you ever had any questions asked you by customers which would lead you to think that they believed the cigarettes were made by the same people that made the gum?

A. No.

Q. 14. You never had any such questions asked you?

A. No.

Q. 15. How long have you been in business here?

A. A little over six years.

Q. 16. How many customers do you serve a day, approximately,—in a general way?

A. That is something I could not tell.

791 Q. 17. Well, I mean in a general way, is it ten, or fifty, or a hundred?

A. Well, about fifty,—I think a little more than fifty, —perhaps,—small sales.

Q. 18. Do you know where M. J. Bailey's grocery store is located in Lawrence?

A. No.

Q. 19. How far is 34 Amesbury Street from here?

A. The street runs this way (indicating). It is way up across Essex Street anyway.

Q. 20. About how far, about how many blocks?

A. Two, I guess,—about two blocks.

792

Mr. Cavanagh: That is all.

*Cross Examination.*

X-Q. 1. (By Mr. Hinton). What is the size of your store, about, do you know?

A. What?

X-Q. 2. How big is your store?

A. What do you mean, how big?

X-Q. 3. The number of feet, how long or how wide, approximately?

A. I didn't measure it, I don't know.

X-Q. 4. About 20 feet, by 10, something like that? 793

A. Of course I didn't measure it. If I said, maybe it would be wrong, see. Why, what is the idea? You can measure it now if you want to.

Mr. Cavanagh: Put it down in a general way, if you want to.

X-Q. 5. It is a one-room store?

A. Yes, one room, and one room in back.

X-Q. 6. Another room in the back that you put things in?

A. Yes.

X-Q. 7. You sell some kinds of groceries here? 794

A. Yes, sir.

X-Q. 8. Candies and tobacco?

A. Candies, tobacco and fruit.

X-Q. 9. You are the proprietor, running the store?

A. Yes.

X-Q. 10. Any other help?

A. No help.

X-Q. 11. How many of these Beech-Nut cigarettes do you suppose you sell a day?

A. I couldn't tell you; sometimes we sell just a few, and sometimes we sell more. 795

X-Q. 12. How many do you buy a week?

A. I am buying nothing last week; the week before I bought two cartons,—a week before last.

X-Q. 13. And none since?

A. No, none since.

X-Q. 14. And that is about the way it goes?

A. That is about the way it goes, slow, you know.

X-Q. 15. You say you sell the Beech-Nut gum here?

A. Yes, sir.

X-Q. 16. Who makes the Fatima cigarettes, do you know?

- 796 A. I didn't look to see.  
X-Q. 17. Can you tell me out of your head who makes the Fatima cigarettes?  
A. Of course I don't handle much of them.  
X-Q. 18. How about the Camels, do you know who makes them?  
A. The Camels?  
X-Q. 19. Yes.  
A. No,—the American Tobacco Company, I think.  
X-Q. 20. Who makes the Lucky Strike, do you know?  
A. Meyers, or Miles,—I don't know.  
X-Q. 21. And who makes the Moguls?  
797 A. I don't handle them.  
X-Q. 22. Did you ever handle the Murads?  
A. Yes, sir.  
X-Q. 23. Who makes those?  
A. I don't know; I didn't look on the packages.  
X-Q. 24. Who makes the Helmars?  
A. I couldn't remember who makes them, but of course when I look at the package I can tell.  
X-Q. 25. But in the ordinary course you would not look on the package, unless somebody asked you?  
A. No.  
X-Q. 26. Now, did they ever ask you to look on the  
798 package, and ask you who made the Beech-Nut cigarettes?  
A. No.  
X-Q. 27. Or the Beech-Nut gum?  
A. No. You can see it on the package.  
X-Q. 29. Who put in the Beech-Nut cigarettes, Mr. Madden?  
A. No; Mr. Casey. I buy from Mr. Casey.  
X-Q. 30. Who is he, a jobber?  
A. Yes, a jobber,—Mike Casey.  
X-Q. 31. Now, you say that you never had any dis-

cussion with your customers about who makes the Beech-Nut cigarettes? 799

A. No.

X-Q. 32. Nobody ever asked you, and you never told anybody?

A. No; because, as you ask me now, I would have to look. I could tell if I looked who made the cigarette. If anybody asked me who makes it, I would say, see the package, that is all.

X-Q. 33. Did you ever try to remember, say a year ago—if people would ask about that, would you try to remember, if you could, any of those questions?

A. What questions? 800

X-Q. 34. About who made the Beech-Nut cigarettes?

A. If they asked me the question?

X-Q. 35. Were you asked to try and remember whether you were asked in regard to who made them?

A. Oh, about a year ago, you mean?

X-Q. 36. Yes.

A. Nobody ever asked me, no.

X-Q. 37. You didn't pay any attention, but so far as you remembber now nobody asked you, but you don't know definitely.

X-Q. 38. Nobody asked me who made them. They asked for the Beech-Nut cigarette. 801

X-Q. 39. And you sold them, and they walked out?

A. Yes, sir.

X-Q. 40. And so far as you know you had no talk with anybody about it?

A. No.

Mr. Hinton: That is all.

Mr. Cavanagh: That is all.

Deposition closed.

Signature waived.



802

LOUIS SCHEIPERS, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. Will you please state your name, age, residence and occupation?

A. Louis Scheipers; my residence is 28 Oakwood Avenue, Lawrence, Mass.; age 37; occupation tobacconist and confectionery business. I run a tobacco store down below here, and a candy store here.

803

Q. 2. How many stores have you?

A. Two.

Q. 3. Are you the proprietor of these stores?

A. Yes, sir.

Q. 4. The present store, where this testimony is being taken, is located where?

A. 541 Essex Street, Lawrence.

Q. 5. Is that the main street of the town?

A. Yes, it is the main street.

Q. 6. And do you sell tobacco in this store?

A. Yes.

Q. 7. What else?

804

A. Candy, Beech-Nut products of both kinds.

Q. 8. Do you sell the Beech-Nut cigarettes here?

A. Yes.

Q. 9. And do you also sell Beech-Nut gum?

A. Beech-Nut gum, and Beech-Nut marshmallow.

Q. 10. Do you sell any Beech-Nut scrap in your store?

A. Yes.

Q. 11. Who, if you know, makes the Beech-Nut cigarette and the Beech-Nut scrap tobacco?

A. P. Lorillard.

Q. 12. Who makes the Beech-Nut gum and the Beech-Nut Marshmallow?

1144

A. Why, the Beech-Nut Food Products Company, 805 whoever they are.

Q. 13. About how many customers a day do you serve in this store, at 541 Essex Street,—the candy store?

A. Five or six hundred.

Q. 14. And about how many at the tobacco store?

A. Down below?

Q. 15. Yes.

A. Oh, I probably sell more than that down there.

Q. 16. Do you wait on customers in both stores?

A. Well, I am not putting in much time down at the other store now, but I wait on customers there sometimes when they go to lunch.

Q. 17. But you wait on customers here?

A. Yes, sir.

Q. 18. Do you know where M. J. Bailey's grocery store is located?

A. Yes; right around the corner from me; their store is right around the corner on Amesbury Street.

Q. 19. How far is the Bailey store from the present store, here?

A. About two blocks.

Q. 20. Will you state whether or not you were ever under the impression that the Beech-Nut cigarettes or the Beech-Nut scrap tobacco were made by the same people that made the Beech-Nut gum, and the Beech-Nut candies?

A. No; I always thought they were two different concerns, one was a tobacco and the other a food product company.

Q. 21. State whether or not you ever had any inquiries for or questions from your customers which would lead you to believe that they thought the Beech-Nut cigarette or the Beech-Nut scrap tobacco was made by the Beech-Nut Food Products people?

A. No.

806

807

808 Q. 22. You never had any such inquiries?

A. No; we have always sold the two products, we have sold the cigarettes and the gum.

Q. 23. How long have you had the Beech-Nut cigarettes?

A. Why, ever since they came out. I have been in the tobacco business 19 years. The same with the scrap.

Q. 24. What, so far as you know, is the reputation of the P. Lorillard Co.?

A. Why, A No. 1; they have always used me all right.

809

Mr. Cavanagh: I think that will be all.

*Cross Examination.*

X-Q. 1. (By Mr. Hinton.) The store in which you work is a candy store, soda, and confectionery?

A. Yes; and a tobacco counter too.

X-Q. 2. A tobacco counter in it, and that is where you spend most of your time?

A. Yes; since last December.

X-Q. 3. You wait on the counter steadily?

A. On the tobacco counter all the time.

810

X-Q. 4. Were you asked, say a year ago, when the Beech-Nut cigarettes first came out, to make a note of any remarks of customers, any remarks that customers may have made to you about those cigarettes?

A. No, not that I remember.

X-Q. 5. You don't remember?

A. I don't remember being asked, really.

X-Q. 6. Were you making any effort to remember at that time, if you were asked?

A. No; I don't remember being asked at all.

X-Q. 7. I understand that, but did you make any

effort to remember at that time; was it something you 811  
would watch out for at the time?

A. No.

X-Q. 8. I suppose customers come into your store,  
and ask for Camel cigarettes, or Beech-Nut cigarettes,  
or whatever they want, and take the goods and go out  
usually, and they don't tell you, or they don't have any  
talk with you about who they think makes them, do  
they?

A. Not very often, no.

X-Q. 9. It would not be an ordinary thing for a man  
to walk into your store and say, "I know who makes  
the Camel cigarettes," or "I don't know who makes the 812  
Camel cigarette."

A. No.

X-Q. 10. He buys them as Camel cigarettes? A.  
Yes.

X-Q. 11. Did you ever have anybody come in and  
ask for just "Beech-Nut" without specifying?

A. No.

X-Q. 12. You don't remember that?

A. No.

X-Q. 13. Do you know what is printed on a package  
of Camel cigarettes underneath the picture of a  
camel? 813

A. I guess there is a name underneath, but I can't  
think of it.

X-Q. 14. The manufacturer's name?

A. Yes.

X-Q. 15. And who is the manufacturer?

A. I know it is Reynolds.

X-Q. 16. That is printed underneath the picture of  
the camel on the front?

A. Yes.

X-Q. 17. What is printed on the front near the bot-  
tom on a package of Lucky Strike, do you know?

814 A. It is marked, "P. Lorillard Co." I don't know whether it is front or back.

X-Q. 18. Is it on the front or back?

A. I mean American Tobacco Company.

X-Q. 19. If you will take my word for it, the names that you mention do not appear on either of the two packages in the place mentioned. Now you said if a customer comes in to buy for instance, Camel cigarettes, in the ordinary course he takes the goods and walks out?

A. Yes.

815 X-Q. 20. He does not discuss with you who makes them?

A. No.

X-Q. 21. Of course you don't know what he thinks about that, not being a mind reader?

A. No.

X-Q. 22. You don't know anything about that?

A. No.

Mr. Hinton: That is all.

*Re-direct Examination.*

816 R-D Q. 25. (By Mr. Cavanagh.) Will you state whether or not if you had any inquiries, or repeated inquiries as to whether the cigarettes were made by the same people that made the gum you would recall those inquiries?

A. What do you mean?

R-D Q. 26. If you had people come in, one after another, and they made repeated inquiries whether the cigarettes were made by the same people that make the Beech-Nut gum, would you recall those instances?

A. Why, yes; I would know that there were two concerns that made the different products, all the time.

Mr. Cavanagh: That is all.

*Re-cross Examination.*

817

R-X Q. 23. (By Mr. Hinton.) You would know that it was the Beech-Nut Packing Company that made the gum?

A. Yes, because I passed the Beech-Nut factory one time, on my way to New York, and I know where the factory is, and I always know that P. Lorillard Co. made the cigarettes.

Mr. Hinton: That is all.

Mr. Cavanagh: That is all.

Deposition closed.

Signature waived.

818

ARAM GULIAN, a witness called in behalf of the defendant, being first duly sworn, deposes and says, as follows, in answer to interrogatories by Mr. Cavanagh:

Q. 1. What is your name, age residence and occupation?

A. Aram Gulian.

Q. 2. Age?

A. 20.

819

Q. 3. Residence?

A. 201 Jackson Street, Lawrence.

Q. 4. Occupation?

A. Drug clerk.

Q. 5. Where are you a drug clerk?

A. Liggett's drug store.

Q. 6. Where is that located?

A. Corner of Amesbury and Essex Street, — 361 Essex Street.

Q. 7. Is it a corner drug store?

A. Yes; corner Amesbury and Essex Street.

820 Q. 8. Do you know where the store of M. J. Bailey, grocer, is located?

A. Yes.

Q. 9. How far away is that from where you work?

A. 20 or 30 feet, right across the street.

Q. 10. The Liggett store is in the business section of the city, a corner store?

A. Yes.

Q. 11. In that store do you sell Beech-Nut cigarettes?

A. Yes.

Q. 12. Do you sell scrap tobacco?

A. No, we don't; just the cigarettes.

821 Q. 13. Do you sell any Beech-Nut chewing gum?

A. Yes.

Q. 14. Do you know what concern makes the Beech-Nut cigarette?

A. Lorillard.

Q. 15. And do you know who makes the Beech-Nut gum?

A. The Beech-Nut Packing Company, so far as I know.

Q. 16. Will you state whether or not you were ever under the impression that the Beech-Nut cigarettes were made by the same concern that makes the Beech-Nut

822 gum?

A. No; I never was.

Q. 17. How many customers do you serve a day in that store, approximately,—that is, in a general way?

A. Oh, a couple of hundred, possibly.

Q. 18. How long have you been selling the Beech-Nut cigarettes?

A. About a year, I guess, or a year and a half.

Q. 19. Will you state whether or not in your experience you ever had any customers inquire or make any remark which would lead you to think that they thought the cigarettes were made by the same people that made the gum?

A. No, sir.

823

Q. 20. You never had any such instances?

A. No; I don't remember of any.

Mr. Cavanagh: That is all.

*Cross Examination.*

X-Q. 1. (By Mr. Hinton.) Are you behind the tobacco counter in that store?

A. Yes; a part of the time, not always.

X-Q. 2. You are the general clerk of the store, and you do everything?

824

A. Yes.

X-Q. 3. How many clerks are there in the store?

A. I should think about 8 or 9,—that is regularly.

X-Q. 4. Do you do the tobacco buying?

A. Ordering it; yes.

X-Q. 5. Are you acquainted with Mr. Madden of the Lorillard Company?

A. No, sir. You see we do it direct from New York, and we have no way of getting in contact with the salesmen.

X-Q. 6. This man here, (referring to Mr. Madden), you don't know him?

825

A. Of course I saw him in the store when he came in before,—of course I have seen him.

Q. 7. You put in the Beech-Nut cigarettes over in that store yourself, did you?

A. Myself?

X-Q. 8. Or did you do it on instructions from New York?

A. I had nothing to do with that. That comes in the candy department.

X-Q. 9. Did you receive any advance notice before you put in the Beech-Nut cigarettes that the Lorillard Company was coming out with the Beech-Nut cigarettes?



826 A. I don't think so.

X-Q. 10. How did you come to put them in?

A. We got instruction letters from New York, saying that the Beech-Nut cigarettes have just come out and you can order if you want, and when we have them on the standard list we can order.

X-Q. 11. You knew before you ever got the Beech-Nut cigarettes who made them?

A. I didn't know they were made by Lorillard until I received them.

X-Q. 12. When you received them you looked on the package?

827 A. Yes.

X-Q. 13. And you didn't know before you got the goods?

A. No.

X-Q. 14. All you knew, it was "Beech-Nut cigarettes?"

A. Yes.

X-Q. 15. Were you making any effort, Mr. Gulian, a year ago, to make a note of or remember any comments or remarks that your customers might make about these Beech-Nut cigarettes when they bought any?

A. No.

828 X-Q. 16. You paid no particular attention to it?

A. I didn't pay attention to it, no.

X-Q. 17. You can't remember any particular case now when you discussed the matter of who they were made by with any particular customer?

A. No, I don't think anybody passed a remark; they came in and bought it and went out.

X-Q. 18. They didn't ask any questions about them, so far as you are concerned?

A. No, not as far as I am concerned|.

Mr. Hinton: That is all.

*Re-direct Examination.*

829

R-D Q. 21. (By Mr. Cavanagh.) Will you state whether or not if you had had any remarks addressed to you, or inquiries, or questions asked you as to whether the cigarettes were made by the gum people, would you be likely to recall that?

Mr. Hinton: Objected to as calling for a conclusion of the witness.

A. Would I recall it?

R-D Q. 22. Yes; if you had had a lot of questions asked you about it?

830

A. I suppose I would.

Mr. Cavanagh: That is all.

*Re-cross Examination.*

R-X Q. 19. (By Mr. Hinton.) That would depend on how many you had ask you, I suppose?

A. Yes.

Mr. Hinton: That is all.

Deposition closed.

Signature waived.

881

832

WHITMAN W. COLLINS, on oath says: I am a Court Reporter located at Room 706 Barristers Hall, Pemberton Square, Boston, Massachusetts; that I took the foregoing testimony stenographically at Boston, Lynn, Salem and Lawrence, Massachusetts and reduced it to writing under the supervision of Daniel T. O'Connell, Notary Public, acting as Special Examiner by consent of counsel, before whom the foregoing depositions were taken; that I have been paid the sum of  
for taking in shorthand and transcribing the foregoing testimony, and that the same is a fair, just and reasonable charge.

833

WHITMAN W. COLLINS.

834

I, Daniel T. O'Connell, a Notary Public within and for the Commonwealth of Massachusetts, acting as Special Examiner by consent of counsel, do hereby certify that the foregoing depositions of Ferdinand Bieringer, Haskell Sharf, Eleazer Lebewohl, L. G. Cauto, Harry Klein, Benjamin Hurvitz, John A. Ratto, Max Dublin, Harry Stone, Benjamin Lescovitz, Hugh F. Wallace, George O. Adams, George C. Smith, Aaron Ansel and George Dougall, (Taken at Boston, Mass.) of Martin O. Connors, Timothy James Dumas, Philip H. Moran and John J. LeColst, (Taken at Lynn, Mass.) of Edward Adelman, John T. Powers and Dennis T. O'Callahan, (Taken at Salem, Mass.) and of Thomas J. Maguire, Peter Peters, Louis Scheipers and Aram Gulian (Taken at Lawrence, Mass.), were taken in behalf of P. Lorillard & Co., defendant, pursuant to agreement and notice before me at Room 401 Exchange Building, 53 State Street, Boston, Massachusetts, and

at the place of business of the above named witnesses 835  
in Lynn, Salem and Lawrence, Mass., beginning on the  
eighth day of August, A. D., 1922, and ending on the  
twelfth day of said August, that each of the above  
named witnesses was by me duly sworn; that the testi-  
mony of said witnesses was taken in shorthand, under  
my supervision, by Whitman W. Collins, a court re-  
porter, well known to me, and thereafter reduced to  
typewriting; that the opposing party was represented  
by Sebastian Hinton during the taking of said testi-  
mony; that by agreement of counsel the signature of  
each witness was waived as indicated on the deposi-  
tion. 836

I am not connected by blood or marriage with either  
of the parties hereto or interested directly or indirectly  
in the matter in controversy.

DANIEL T. O'CONNELL,  
Notary Public.

838

## DEPOSITIONS.

## UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company,

Plaintiff,

vs.

P. Lorillard Company,

Defendant.

In Equity

839

Worcester, Massachusetts,

August 16, 1922.

Testimony taken on behalf of the defendant, P. Lorillard Company at Worcester, Massachusetts, at two o'clock P. M., August 16, 1922, pursuant to notice and by agreement of counsel before Penelope Comberbach, a Notary Public in and for the County of Worcester, acting as Examiner by consent of counsel.

Present: Sebastian Hinton, Esq., of Offield, Poole Hinton & Scott, attys. for Beech-Nut Packing Company;  
840 Richard B. Cavanagh, Esq., of Meyers, Cavanagh & Whitehead, attys. for P. Lorillard Co.

SAMUEL S. BROADBENT, a witness called on behalf of the Defendant, being first duly sworn, deposes and says, in answer to interrogatories propounded to him by Richard B. Cavanagh, Esq., as follows:

(By Mr. Cavanagh).

Q. 1. What is your full name?

A. Samuel S. Broadbent.

Q. 2. What is your occupation?

841

A. You ought to know without asking. I am a druggist.

Q. 3. Where is your store located?

A. It was located at 83 Maywood Street, Worcester.

Q. 4. How long have you been in this present location?

A. I am just working here. I have only been here a few weeks.

Q. 5. What is this address?

A. 24 Lincoln Square.

Q. 6. Where was your former place of business?

A. 83 Maywood Street.

842

Q. 7. How long were you there?

A. Six and a half years.

Q. 8. While at 83 Maywood Street, did you sell the "Beech-Nut" cigarettes?

A. Yes.

Q. 9. While at 83 Maywood Street, did you sell "Beechnut" serap tobacco?

A. No, I didn't.

Q. 10. Do you know who makes the "Beech-Nut" cigarettes?

A. I knew that from the time you started to advertise them, because I saw the name.

843

Q. 10. What concern?

A. Lorillard.

Q. 11. And did you sell "Beech-Nut" gum?

A. Yes.

Q. 12. Please state whether or not you ever thought the "Beech-Nut" cigarettes were made by the same people that make "Beech-Nut" gum?

A. No, because I saw the advertisement when they first came out in the paper, saying they were made by Lorillard & Company.

Q. 13. Please state whether while you were at that

844 store selling cigarettes and gum, you ever had any comments or inquiries which would lead you to believe the gum people were putting out the "Beech-Nut" cigarettes?

A. Not as far as I remember.

Q. 14. You cannot recall any such?

A. I can't remember of having any.

Q. 15. Was the Maywood Market near your place of business?

A. Next door but one.

Q. 16. Do you know who ran the Maywood Market?

845 A. Well, at the present time, Bottomley; but before that, Bullard & Kirby. I guess they were out of it before "Beech-Nut" cigarettes were on the market.

Q. 17. You knew Mr. Bottomley, Mr. Dorris Bottomley?

A. Yes.

(It is STIPULATED that the Dorris Bottomley referred to is a witness called by the plaintiff Beech-Nut Packing Co., in prima facie proof, and is the son of Bottomley referred to as owning the Maywood Market.)

846 *Cross Examination by Mr. Hinton:*

X-Q. 18. How long have you been selling tobacco products?

A. How long have I?

X-Q. 19. Yes.

A. Well, I have sold them ever since I have been in the drug business, and I have been in that about thirty years.

X-Q. 20. Have you sold other Lorillard brands besides "Beech-Nut?"

A. Of what? Cigarettes, cigars?

X-Q. 21. Cigarettes?

847

A. I don't remember. I don't know what other brands they make, really.

X-Q. 22. The only brand you can identify positively as a Lorillard brand is the "Beech-Nut?"

A. Yes.

X-Q. 23. Do you know who makes the "Camel" cigarette?

A. No, I don't know as I do.

X-Q. 24. Do you know who makes the "Fatima" cigarette?

A. I wouldn't have known about those only from reading their ad in the paper, and, seeing the name "Beech-Nut," I looked to see if it was made by the "Beech-Nut" people and I saw that name "Lorillard," underneath, and that fixed it in my mind.

848

X-Q. 25. When you first saw the "ad," you thought it might be made by the "Beech-Nut" people, and you made a closer examination and found they were made by Lorillard?

A. I did. That is what fixed it in my mind.

X-Q. 26. If there had not been some question in your mind about it, you would not have made that close examination?

A. Well, I looked to see from curiosity, to see if it was the Packing People putting out cigarettes also; that is why I looked it over.

849

X-Q. 27. Do you sell "Murad" cigarettes?

A. Yes, I think we have them.

X-Q. 28. Do you sell "Mogul" cigarettes?

A. Yes.

X-Q. 29. Do you sell "Helmar" cigarettes?

A. Yes.

X-Q. 30. Do you know who makes those cigarettes?

A. I do not.



850 X-Q. 31. And you cannot name any Lorillard brands at all of cigarettes?

A. No. As I told you, that was the only thing that fixed that in my mind, was reading the ad through to see—

X-Q. 32. Now, I want you to go back, if you please, to the period of a year and a half ago when "Beech-Nut" cigarettes first came out here. Were you making any special effort at that time to make a note of anything customers might say about these cigarettes?

A. No.

851 X-Q. 33. You were not paying any particular attention to that, one way or the other, were you?

A. No.

X-Q. 34. And there is no reason why you should have remembered all this time any remarks you would have heard?

A. Well, I would be apt to, if anything was said. I think I would have been apt to remember it. As far as I know, I never had anyone make any confusion between the two at all.

X-Q. 35. As far as you know?

A. As far as I remember.

852 X-Q. 36. As far as you know? As far as **anybody** has told you?

A. No, as far as I can remember.

X-Q. 37. How many packages of "Beech-Nut" cigarettes were you selling?

A. Oh, I don't know; they were not a big seller over there.

X-Q. 38. Well, how many would you sell?

A. I don't think I would average a carton a week.

X-Q. 39. That is, twenty packages a week?

A. It wouldn't average that; say probably two cartons in three weeks.

X-Q. 40. How are they going now?

A. They are not selling very fast here. I am talking 853  
about the store over where I was.

X-Q. 41. And they are going at about the same speed  
here?

A. Yes, not any faster than that.

X-Q. 42. Do you remember whether you ever had any-  
body come in your store and ask just for "Beech-Nut?"

A. I don't think so. I think they usually said whether  
they wanted gum or mints or cigarettes.

Signature waived.

HENRY FREEMAN, a witness called on behalf of the 854  
defendant, being first duly sworn, deposes and says,  
in answer to interrogatories propounded to him by  
Richard B. Cavanagh, Esq., as follows:

By Mr. Cavanagh:

Q. 1. What is your full name?

A. Henry Freeman.

Q. 2. What is your residence?

A. 7 Beaconsfield Road, Worcester.

Q. 3. What is your occupation?

A. That cigar store down there.

Q. 4. Where is that located? 855

A. 198 Front Street, Worcester.

Q. 5. That is the business section of Worcester?

A. Yes.

Q. 6. How long have you been in the cigar business  
in Worcester.

A. Twenty years next February since I have been  
down there.

Q. 7. What kind of goods do you sell in that store be-  
sides tobacco? Tobacco products? Do you sell any-  
thing else?

856 A. Why, gums a little, Arrowmints.

Q. 8. Do you sell the "Beech-Nut" cigarette in your store?

A. Yes.

Q. 9. Do you sell the "Beech-Nut" Scrap tobacco?

A. Yes.

Q. 10. Who if you know makes the "Beech-Nut" cigarette?

A. The Lorillard Company.

Q. 11. And, if you know, who makes the scrap tobacco?

A. Lorillard is who we buy it from.

Q. 12. Do you also sell "Beech-Nut" gum?

857 A. No.

Q. 13. How long have you been selling "Beech-Nut" cigarettes?

A. (After referring to Mr. Madden as to how long it had been in this section) says: About two years.

Q. 14. What is the reputation of the Lorillard Company in the tobacco business, if you know?

A. Well, they are known to be of a pretty good reputation. I have always known them to have a pretty good reputation in the tobacco line.

858 Q. 15. Please state whether you were ever under the impression the "Beech-Nut" cigarettes were made by the same people that make the "Beech-Nut" gum?

A. Never.

Q. 16. Will you please state whether you ever had any customers make any inquiries, comments or remarks which would lead you to believe that they thought the Gum people were putting out "Beech-Nut" cigarettes?

A. I don't remember any.

*Cross Examination by Mr. Hinton:*

X-Q. 17. Did you put in the "Beech-Nut" cigarettes since they came out in this section?

A. Yes.

859

X-Q. 18. So you remember how you came to put them in? Did Lorillard's man come around and sell them to you?

A. Lorillard's man.

X-Q. 19. Of course you knew before you put them in they were a Lorillard product?

A. I did. I know they were sold in other sections. I have seen them up thru Western New York before they ever came here.

X-Q. 20. How many clerks work in your store?

A. Why, two or three there, at different times.

X-Q. 21. You do a wholesale business?

860

A. Yes.

X-Q. 22. What percentage of your business is whole sale, approximately?

Mr. Cavanagh: Just in a general way.

A. Ninety per cent.

X-Q. 23. How much of your time do you spend behind the counter?

A. My time?

X-Q. 24. When you are in the store?

A. Oh, two or three hours a day, perhaps.

861

X-Q. 25. You were not making any effort to make a note or remember any comments or remarks or inquiries that the customers may have made about this "Beech-Nut" cigarette, were you?

A. What?

X-Q. 26. Question read to witness.

A. Nothing more than some people were smoking it; that is all. That is, you know what I mean—people who would smoke the cigarette telling me about how good a cigarette it was.

X-Q. 27. Question again read, and explained to witness.

862 A. No.

X-Q. 28. When you say that you had heard no such comments, remarks or inquiries, what you mean is you do not remember any?

A. No, sure I don't.

X-Q. 29. What are the leading brands of cigarettes that sell in this section and which are made by the Lorillard Company—do you know?

A. "Beech-Nut" is one. That wouldn't include the others, would it?

X-Q. 30. I want to find out.

A. I mean Turkish cigarets.

863 X-Q. 31. Just mention any.

A. Helmar, if you call it their brands; Murad, and "Beech-Nut".

X-Q. 32. Mogul?

A. Yes. Deities.

X-Q. 33. Can you think of any other Lorillard brand of cigarets?

A. Ziras are sold a little here.

X-Q. 34. Do you think of any others?

A. (Enumerating): Helmars, Moguls, Murads, Beech-Nut, Ziras, Deities—that is about the only ones.

864 X-Q. 35. You carry a pretty full line in your store don't you?

A. Pretty much.

X-Q. 36. You try to carry everything in demand?

A. As a rule.

*Re-direct Examination by Mr. Cavanagh:*

R-D Q. 37. Can you state whether or not if the number of customers who had been coming into your store daily was any large number, coming in and asking if the gum people were making the cigarettes, whether you would have remembered that fact?

Objected to by Mr. Hinton as leading and calling 865  
for conclusion of the witness.

A. They never did.

R-D Q. 38. If they did, you would have remembered it?

A. I would remember it.

Signature waived.

ANDREW J. WRIGHT, a witness called in behalf of  
the Defendant, being first duly sworn, deposes and  
says, in answer to interrogatories propounded by  
Richard B. Cavanagh, Esq., as follows:— 866

By Mr. Cavanagh:

Q. 1. What is your full name?

A. Andrew J. Wright.

Q. 2. What is your address?

A. 500 Park Avenue, Worcester.

Q. 3. What is your occupation?

A. I am out of a job at present; I have just sold out.

Q. 4. Well, what line of business were you in,  
recently?

A. This line here. 867

Q. 5. You kept this store, did you?

A. Yes.

Q. 6. What kind of a store?

A. Call it a variety store, we call it; some call it  
department.

Q. 7. What do you sell? What do you sell in this  
store?

A. Why, groceries, notions, confectionery, ice cream,  
soda and tobacco.

Q. 8. "And tobacco"?

A. Yes.

868 Q. 9. How long did you keep this store?

A. I sold out a week ago last Monday (about August 7th).

Q. 10. And you kept here for how long?

A. Eleven years ago the first day of June I owned the place.

Q. 11. You kept the store for eleven years?

A. A little over.

Q. 12. While you were keeping this store, did you sell "Beech-Nut" cigarettes?

A. Yes.

Q. 13. Did you sell "Beech-Nut" scrap tobacco?

869 A. No.

Q. 14. Did you sell the "Beech-Nut" chewing gum?

A. Yes.

Q. 15. Will you state whether or not you were ever under the impression that the Beech-Nut Gum people made the "Beech-Nut" cigarettes?

A. No, I never was.

Q. 16. Do you know who makes the "Beech-Nut" cigarets?

A. Yes.

Q. 17. What concern?

A. Lorillard.

870 Q. 18. Will you please state whether or not you ever heard any customers ask any questions and make any inquiries from you which would lead you to believe they thought the Beech-Nut cigarettes were made by the same people that made the Beech-Nut gum?

A. Never did that I remember.

Q. 19. About how many customers a day did you serve in this store?—approximately; in a general way?

A. Well, I don't know; that is pretty hard to say.

Q. 20. Just in a general way—whether one, or fifty, or a hundred?

A. Well, probably two or three hundred.

Q. 21. Do you know where the Maywood Market is located around here? 871

A. Yes.

Q. 22. How far is it from here?

A. Across the street.

Q. 23. Right across the street?

A. Well, it is on the other street, that block over there (indicating).

Q. 24. Do you know the name of the proprietor or person running it?

A. Yes.

Q. 25. Who is it?

A. J. T. Bottomley. 872

Q. 26. Do you know a Dorris Bottomley?

A. Yes.

Q. 27. Did he work in the market?

A. Yes. He is in the company now.

It is stipulated that the Dorris Bottomley is the same party heretofore called as witness for plaintiff.

*Cross Examination by Mr. Hinton:*

X-Q. 28. How many packages of those "Beech-Nut" cigarettes do you suppose you sell, a day? 873

A. Why, probably at the present time one of those little 20 package cartons—a carton a week.

X-Q. 29. About twenty a week?

A. Yes; not over that.

X-Q. 30. When they first came out, how many did you sell, approximately?

A. Well, probably the most I have sold would not average over double that.

X-Q. 31. Forty (40) packages a week would be your biggest sale?



874 A. When they first came out and during the campaign of doing the advertising, I had a show window in there; I would probably double that. I don't think it would be more than that.

X-Q. 32. That would be your biggest sale,—forty packages?

A. I should say so.

X-Q. 33. How many people work in your store?

A. Four.

X-Q. 34. It is your family?

A. No, two outsiders.

875 X-Q. 35. And these hundred customers a day come in for newspapers and all the various goods you sell?

A. Yes.

X-Q. 36. What are the leading Lorillard brands of cigarettes you sell?

A. I would have to look at the packages to tell you who makes them.

X-Q. 37. Can you name any other Lorillard brand of cigarettes except the "Beech-Nut" without looking at the packages?

A. Very doubtful.

X-Q. 38. Do you know the name of the makers of the "Camel" cigarettes?

876 A. I couldn't say, without looking.

X-Q. 39. Do you know who makes the "Fatima" cigarettes?

A. Again, I wouldn't say without looking.

X-Q. 40. Or Chesterfields?

A. No.

X-Q. 41. Or Deities?

A. No, I don't handle them.

X-Q. 42. Murads?

A. The Greek,—I don't know what his name is; I don't know how you pronounce it.

X-Q. 43. Or Moguls?

877

A. Why—

X-Q. 44. Some Greek makes the Moguls?

Mr. Cavanagh: Anargyros.

A. Yes, I guess that would be it. I was trying to make it begin with an "S."

Mr. Cavanagh: S. Anargyros.

X-Q. 45. You have been selling Deities and Moguls?

A. Deities I haven't handled for a long time.

X-Q. 46. You still sell Moguls?

878

A. Yes.

X-Q. 47. You sell Helmars?

A. Yes.

X-Q. 48. Do you know who makes Helmars?

A. Well, let's see. Isn't that by the same people that makes Moguls?

X-Q. 49. Do you know? Whether you know or not?

A. If I was going to say I should say it was the same people that make the Mogul. I wouldn't swear to it.

X-Q. 50. So the only cigarettes of which you can name the manufacturer definitely is "Beech-Nut?"

A. Why, let's see. No, I guess "Sweet Caps" (Caporals)—isn't that the American? Well, I wouldn't undertake to name them accurately.

879

X-Q. 51. Can you name any other except "Beech-Nut?"

A. Because I never pay any attention to those things. Most of these cigarettes have been manufactured by somebody and have been consolidated with other concerns; without paying any particular attention I know they have been but who the originators are and who owns them, I wouldn't be sure.

880 X-Q. 52. When the "Beech-Nut" cigarettes were put in your store, did a Lorillard salesman get you to take them?

A. Yes.

X-Q. 53. You knew, of course, he was a Lorillard man?

A. Oh, yes.

X-Q. 56. You knew the cigarettes were a Lorillard product before you ever saw them because he told you about them?

881 A. I knew it because I had to sign a paper when I got them. I know if there hadn't been a specialty man around I would never probably have put them in without having a sufficient knowledge of them.

X-Q. 57. Do you know what is printed on a package of Camel cigarettes underneath the camel, without looking?

A. It seems as tho the word "Camel" is there, but I wouldn't swear to it.

X-Q. 58. I mean, underneath the picture of the camel?

A. Not without looking. I couldn't. You mean in lettering?

X-Q. 59. Yes.

882 A. No, I couldn't.

X-Q. 60. Do you know whether there is anything there or not?

A. No.

X-Q. 61. You sell lots of Camels?

A. More than anything else, perhaps, with the exception of Lucky Strike.

X-Q. 62. When you say you haven't heard any comments, remarks, or inquiries from customers, you mean you do not remember any at this moment?

A. No. I don't remember any.

X-Q. 63. Were you interested enough at the time those cigarettes came out to make a note of or remember any such remarks and did you make any such note? 883

A. I never gave it any consideration at all.

X-Q. 64. You didn't try to remember or pay any attention to it?

A. No.

X-Q. 65. Do you know what is on a package of "Beech-Nut" cigarettes? Do you know if there is anything printed on there?

A. Somewhere it says, "Beech-Nut" on there; I couldn't tell where, I don't know whether there is any name printed on there or not; I mean, without looking. I presume there is. 884

X-Q. 66. But you do not remember ever having seen it?

A. No.

*Re-direct Examination by Mr. Cavanagh:*

R-D. Q. 67. I show you a package of "Beech-Nut" cigarettes. Can you read that name on the front of it?

A. Yes.

R-D. Q. 68. What is the name?

A. P. Lorillard Company. Of course, I knew that was on the package somewhere. I haven't my glasses with me, but I can read that. 885

R-D. Q. 69. Will you state whether or not if you had had customers coming in here daily, asking if the cigarettes were made by the gum people, whether you would have remembered that or not?

Objected to by Mr. Hinton as leading.

A. Sure.

R-D. Q. 70. If they had been, you would have remembered it?

A. Yes.

886 *Re-cross Examination by Mr. Hinton:*

R-X-Q. 71. You mean, you knew they were not made by the Beech-Nut people?

A. Yes, sir.

*Re-redirect Examination by Mr. Cavanagh:*

R-R-D. Q. 72. You would have remembered such inquiries—is that what you mean?

Objected to by Mr. Hinton as leading.

887 A. Yes, I would.

Signature waived.

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company,  
Plaintiff.

vs.

P. Lorillard Company,  
Defendant.

In Equity No. 3056.

Commonwealth of Massachusetts, }  
County of Worcester, } ss.:  
District of Massachusetts, }

890

I hereby certify that on the 16th day of August, 1922, before me, Penelope Comberbach, a Notary Public, in and for the County of Worcester, Commonwealth of Massachusetts, acting as Special Commissioner, by consent and agreement of counsel, personally appeared, pursuant to notice, between the hours of nine o'clock A. M. and six o'clock P. M., at Worcester, Massachusetts, the following witnesses: SAMUEL S. BROADBENT, HENRY FREEMAN, and ANDREW J. WRIGHT, of said Worcester, and also Sebastian Hinton, Esq., of Offield, Poole, Hinton & Scott, appearing for Plaintiff, and Richard B. Cavanagh, Esq., of Meyers, Cavanagh & Whitehead, appearing for Defendant; and each and all of the said witnesses, being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as in the foregoing annexed depositions of each of them, set out.

891

I further certify that all of said depositions were begun and completed on the 16th day of August, 1922.

I further certify that each of said depositions was reduced to typewriting under my personal supervision, and that each of said depositions, after it had been re-

892      duced to typewriting, was read over and signatures  
waived, and that each and all of said depositions have  
been retained by me for the purpose of sealing up and  
directing the same to the Clerk of Court as required  
by law.

I further certify that the reason why these deposi-  
tions were taken was that the respective witnesses mak-  
ing same all reside at Worcester, County of Worcester,  
Commonwealth of Massachusetts, more than one hun-  
dred (100) miles from Trenton, New Jersey, the place  
where this cause is to be tried.

893      I further certify that I am not the counsel or attorney  
of the parties, or related by blood or marriage to either  
of the parties, nor am I interested in the event of the  
cause.

WITNESS my hand and Official Seal at Worcester,  
Massachusetts, this 16th day of August, 1922.

PENELOPE COMBERBACH,  
Notary Public.

(Acting by consent of counsel  
Special Commissioner).

Springfield, Mass.,  
August 17th, 1922.

IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEW JERSEY

Beech-Nut Packing Company

v.

P. Lorillard Company

In Equity  
No. 3056

Testimony taken on behalf of defendant P. Lorillard Company, pursuant to notice and agreement of counsel, before Walter C. Ross, Notary Public in and for the County of Hampden, Commonwealth of Massachusetts, acting as Special Examiner, by consent of parties. This testimony is taken pursuant to notice and agreement, formal notice of the production of the witnesses being waived.

Present Sebastian Hinton, Esq., of Offield, Poole, Hinton & Scott, attorneys for Beech-Nut Packing Company.

Richard B. Cavanagh, Esq., of Meyers, Cavanagh and Whitehead, attorneys for P. Lorillard Company. 897

August 17th, 1922.

MR. HERBERT R. HOOPER, a witness called on behalf of P. Lorillard Company, defendant herein, being first duly sworn, deposes and says as follows in answer to the interrogatories propounded to him by Mr. Cavanagh, counsel for P. Lorillard Company:

Q. 1. By Mr. Cavanagh: What is your full name?

A. Herbert R. Hooper.



898 Q. 2. And what is your residence and occupation?

A. 48 Chase Avenue, Springfield.

Q. 3. Occupation?

A. Manager here just now.

Q. 4. What kind of a store is this?

A. F. W. Nash Company, combination stationery, cigars and tobacco.

Q. 5. Located at?

A. 371 Main Street, Springfield.

Q. 6. It is in the business section of the city is it not?

A. Yes.

Q. 7. How long have you been located at this store?

899 A. Two years.

Q. 8. How long have you been in the tobacco business?

A. Well, since 1889 I believe.

Q. 9. Is this store located in the same neighborhood as the Springfield Public Market?

A. Springfield Public Market is right next door.

Q. 10. Do you know who runs that market?

A. Man by the name of Isenburg.

Q. 11. Have you ever sold the Beech-Nut cigarettes and Beech-Nut scrap tobacco?

A. Sell now.

Q. 12. Beech-Nut chewing gum?

900 A. Yes.

Q. 13. Any other products of the Beech-Nut people that make the gum?

A. No, I think not, nothing else.

Q. 14. Do you know who makes the Beech-Nut cigarettes?

A. Sure.

Q. 15. What concern?

A. Lorillard.

Q. 16. How long have you been selling Beech-Nut cigarettes?

A. As long as they have been making them.

Q. 17. How long have they been making them?

901

A. About a year and a half.

Q. 18. How long were you selling the Beech-Nut scrap tobacco?

A. That dates back quite a while.

Q. 19. Before you ever sold the cigarettes?

A. Yes.

Q. 20. Were you ever under the impression that the Beech-Nut cigarettes were made by the same people that make the chewing gum?

A. No.

Q. 21. Will you please state whether or not in your business here you ever had any comments or questions or inquiry from customers which would lead you to believe that they thought the Beech-Nut cigarettes were made by the same people that make the chewing gum?

902

A. I don't remember hearing the question put. I don't remember having it put or hearing it discussed.

Q. 22. Are you working here in the store regularly every day?

A. Yes.

Q. 23. And waiting on customers?

A. Yes.

Q. 24. In a general way about how many customers do you have in this store a day, just in a general way?

903

A. I would say an average of 700. I guess it would go up more than that, but that is safe.

Q. 25. Can you state whether or not you handle any other Lorillard brands?

A. Oh yes, we handle nearly all of them?

Q. 26. Can you name some of them?

A. Cigarettes?

Q. 27. Cigarettes.

A. We handle their Helmars, Moguls, Murads and nearly everything that they make I guess.

Q. 28. So far as you know what reputation has the

904 Lorillard Company in business, what has been your experience in that direction?

A. It has always been good, good reputation in a business way.

*Cross Examination.*

X-Q. 29. By Mr. Hinton: You do the buying here do you?

A. In the tobacco line, yes.

X-Q. 30. How long have you been in the tobacco game?

905 A. Since 1888, 88 or 89.

X-Q. 31. You have been a retail salesman of tobacco all that time?

A. No.

X-Q. 32. What were you doing?

A. I was out for the American as Division man.

X-Q. 33. For the American Tobacco Company?

A. Yes, quite a while.

X-Q. 34. At the time the American Tobacco Company and the Lorillard Company were the same company?

A. No; I went out after they split.

906 X-Q. 35. Were you ever employed by the American Tobacco Company when the Lorillard Company was a part of that company?

A. I don't think so, no.

X-Q. 36. When were you employed by the American Tobacco Company?

A. I went to work for the American Tobacco Company in January 1912 I think and quit two years ago, quit in July 1920.

X-Q. 37. As a salesman?

A. Yes.

X-Q. 38. And before 1912 what were you doing?

A. I was with Barnett.

X-Q. 39. What do they do?

907

A. They were retail and wholesale tobacco business.

X-Q. 40. So you have been intimately associated in the tobacco business since 1888?

A. Yes.

X-Q. 41. When these Beech-Nut cigarettes came out a year and a half ago could you give me an approximation of how many packages you sell a day here?

A. No; I couldn't.

X-Q. 42. Don't they sell like Camels for instance?

A. No.

X-Q. 43. Ten packages or five or what?

A. Ten would probably be putting it strong enough when they first started. 908

X-Q. 44. Do you work at the front of this store where the tobacco counter is all by yourself?

A. Most of the time, yes.

X-Q. 45. And wait on several hundred people a day?

A. Yes.

X-Q. 46. Were you trying at the time to make a note of or remember any discussion that you might have heard about the Beech-Nut cigarettes?

A. No.

X-Q. 47. You made no effort to remember any casual conversations? 909

A. No; had no occasion to.

X-Q. 48. You were very busy, had no occasion to, and you see lots of customers every day?

A. Yes.

X-Q. 49. And your memory is not infallible?

A. Certainly not.

X-Q. 50. What is written on the front of a package of cigarettes, on the Camel cigarettes besides a Camel?

A. What is written on it? Nothing especially that I know.

910 X-Q. 51. What is printed on a package of Lucky Strike cigarettes underneath the red panel Lucky Strike?

A. I don't even know that, might be the factory number, but it is more likely on the reverse side.

X-Q. 52. You have sold lots of Camels over the counter?

A. Yes.

X-Q. 53. And thousands of packages?

A. Yes.

X-Q. 54. And many thousands of packages of Lucky Strike cigarettes, but never noticed it?

A. No.

911 X-Q. 55. When these Beech-Nut cigarettes were put in Mr. Hooper, do you remember whether the Lorillard agent came around and got you to put them in?

A. I don't remember, but undoubtedly we bought them because we very seldom take on a new brand without a fellow coming in and seeing us.

X-Q. 56. You knew it was a Lorillard product before you saw it?

A. Sure.

X-Q. 57. Did you ever examine a package of Beech-Nut cigarettes closely?

A. I don't know as I ever examined any package of  
912 cigarettes closely.

X-Q. 58. What is printed on the front of a package of Beech-Nut cigarettes?

A. Name is on there I know.

X-Q. 59. The name of the cigarette?

A. Yes.

X-Q. 60. The name Beech-Nut?

A. Yes.

X-Q. 61. What else is on the front of the package? Ever notice anything else on the front of the package?

A. No.

X-Q. 62. During this whole, practically the whole of

1180  
this examination a package of Beech-Nut cigarettes with the glaze paper removed has been lying right in front of you hasn't it? 913

A. Yes, but I haven't taken the trouble to look at it.

*Re-direct Examination.*

R-D. Q. 63. (By Mr. Cavanagh.) Would you look at that package of cigarettes and tell me whose name was on it?

A. Sure. The Lorillard Company.

R-D. Q. 64. What would that indicate to you?

A. Indicate it is made by the P. Lorillard Company. 914

R-D. Q. 65. Who makes the Lucky Strike?

A. American Tobacco Company.

R-D. Q. 66. Who makes the Camel cigarette?

A. Reynolds.

R-D. Q. 67. What is the name?

A. R. J. Reynolds Company.

R-D. Q. 68. What company manufactures or puts out the Murad?

A. Lorillard Company.

R-D. Q. 69. Will you please state whether or not you have had numerous inquiries made to you, or inquiries made as to whether or not the gum people were putting out this cigarette, would you remember those inquiries or that fact? 915

Objected to.

By the Witness: Oh sure, would have been apt to.

R-D. Q. 70. It would have impressed itself upon your mind?

A. Sure.

R-D. Q. 71. State whether or not you ever knew any customer to be confused into making—have you ever

916 had any customer ask you was the Beech-Nut cigarette made by the gum people?

A. I don't think I ever had that question put to me.

R-D. Q. 72. State whether or not you would ever sell a customer a package of cigarettes for gum or a food product?

A. Not unless I was foolish.

*Re-cross Examination.*

R-X. Q. 73. (By Mr. Hinton.) You have been manager here two years?

917 A. Yes.

R-X. Q. 73. Who is the owner of this store?

A. Mr. Nash. He is down there if you want to see him.

R-X. Q. 75. And you came direct here from the American Tobacco Company?

A. Yes, quit them one week and came here the next.

R-X. Q. 76. Did they have anything to do with your getting this position here?

A. Absolutely nothing.

R-X. Q. 77. You left them voluntarily?

A. Yes.

918 R-X. Q. 78. On good terms with them?

A. Yes.

R-X. Q. 79. Were with them over ten years?

A. No. I was with them from 1912.

R-X. Q. 80. Nine years?

A. Only about eight years, seven years and a half.

R-X. Q. 81. Now when a man comes in to buy a package of Camels, Camel cigarettes, he asks for his Camels, put down the money and picks up the goods, walking out and unless he tells you you have no means of knowing what is on his mind?

A. No.

*Re-direct Examination.*

919

R-D. Q. 82. (By Mr. Cavanagh.) And likewise when they come in and get a package of Beech-Nut gum?

A. Certainly not.

R-D. Q. 83. It is the same proposition, you don't have time to discuss—

A. I wait on from 300 to 500 people a day, figure the minutes and you notice a fellow don't have a great deal of time for discussion.

MR. WILLIAM W. PROVOST, a witness called on behalf of P. Lorillard Company, defendant herein, being first duly sworn, deposes and says, as follows, in answer to the interrogatories propounded to him by Mr. Cavanagh, counsel for P. Lorillard Company:

920

Q. 1. (By Mr. Cavanagh.) Will you please state your name, age, residence and occupation?

A. William W. Provost.

Q. 2. Age?

A. 32.

Q. 3. Residence?

A. 20 Scott Street.

Q. 4. Springfield, Mass. Occupation?

921

A. Cigar and periodical business, candy.

Q. 5. Do you have charge of this store here?

A. Yes, all of them.

Q. 6. All of the stores?

A. Yes.

Q. 7. What concern do you work for?

A. Roberts Smoke Shop.

Q. 8. And how many stores have they here in Springfield, about?

A. Have ten here in town. They are not all cigar stores.



922 Q. 9. Where is this present store we are in now?

A. 785 Main, corner Main and Marble.

Q. 10. Did you ever handle the Beech-Nut cigarettes in the store?

A. Yes; handled them, had them practically ever since they were out, that is, here in town.

Q. 11. About how long ago?

A. I couldn't tell you that, two years I should say.

Q. 12. Did you ever handle this Beech-Nut Scrap tobacco?

A. Yes.

Q. 13. About how long were you handling that in a general way?

A. I should say longer than that.

Q. 14. Before you had the cigarettes?

A. Before we had the cigarettes.

Q. 15. When the Beech-Nut cigarette was first put in your store who did you think made it?

A. Lorillard.

Q. 16. What led you to that belief?

A. Well, the name is on the package on the bottom.

Q. 17. You also handle the Beech-Nut chewing gum?

A. Yes.

Q. 18. Do you know the name of the concern that makes that?

A. Yes; the Beech-Nut Packing Company. I think that's the name of the company, the people that make the Beech-Nut brands.

Q. 19. What Beech-Nut brands?

A. Bacon and such things.

Q. 20. Food products?

A. Yes.

Q. 21. Were you ever under the impression that this Beech-Nut cigarette was made by the same people that make the gum?

A. No.

Q. 22. State whether or not in your experience in the stores you have ever heard of any questions or comments or inquiries from customers which would lead you to believe that they thought the gum people made the cigarettes? 925

A. No.

Q. 23. Did you ever have any such questions at all?

A. No one ever asked me that, no customers coming in.

Q. 24. Never had any discussion about the matter at all?

A. No.

*Cross Examination.*

926

X-Q. 25. (By Mr. Hinton): How long have you been selling tobacco over the counter?

A. 17 years.

X-Q. 26. Who did you work for before you worked for your present employer?

A. I started in with him.

X-Q. 27. You have been working in these smoke shops 17 years?

A. Yes.

X-Q. 28. And have been in this store two years?

A. No. I have been down here about a year and— I have been down here about six months, in this store here. 927

X-Q. 29. Where have you been?

A. I have been with him in all of his stores for 16, 17 years. Of course this is our headquarters now. At one time our headquarters was up the street about four blocks and five years ago I had Chestnut Street.

X-Q. 30. Do you people put out any brands of cigars of your own?

A. No.

928 X-Q. 31. You don't put out any?

A. No.

X-Q. 32. Do you remember when you put this Beech-Nut cigarette in, whether the Lorillard man came around and got you to put it in?

A. He did.

X-Q. 33. Did he come around and sell it to you?

A. Yes, a salesman came in and we put the brand in through a salesman.

X-Q. 34. And of course you knew he was a Lorillard man?

A. Yes.

929 X-Q. 35. You knew they were Lorillard goods before you opened the first carton because he told you?

A. Yes.

X-Q. 36. Have you made any effort to make a note of or remember any comments or inquiries that might be asked you by customers.

A. In regards to who it was made by? No, I never have. People might have but I never run—no one ever asked me that. No, I have never been asked that.

X-Q. 37. You don't remember it, in other words?

A. No; I have never been asked that.

930 X-Q. 38. Do you know what is written on a package of Camel cigarettes?

A. I don't mean by that, people might have asked, people might have asked, but never have asked me.

X-Q. 39. No. What is printed on a package of cigarettes underneath the picture of the Camel?

A. The name of the people that manufacture it.

X-Q. 40. And how about Lucky Strikes underneath the red panel front and back?

A. I think that comes on the side of those.

X-Q. 41. Underneath the red panel?

A. I don't know as I could tell you exactly. You will find the name of the manufacturers of cigarettes some-

times on the front, sometimes on the sides or sometimes on the back. I couldn't tell every cigarette on every package. If I wanted to find who made it it is usually on there somewhere. 931

X-Q. 42. On there somewhere?

A. Somewhere.

X-Q. 43. How many of these Beech-Nut, how many packages would you sell a day here, do you suppose?

A. Well, I couldn't tell you that, how many we sell a day because we don't take daily inventories and I'm not behind the counter in any one store. Probably use around 10,000 Beech-Nuts a month.

X-Q. 44. I mean in this one store? 932

A. That I couldn't tell you.

X-Q. 45. Five packages a day?

A. Might be five, might be one, might be none. I couldn't tell you how they sold in each individual store per day.

X-Q. 46. How many in this store?

A. I couldn't tell about this store because I'm not behind the counter.

X-Q. 47. How long has it been since you gave up working behind the counter?

A. When I work behind the counter it is to fill in in an emergency. I haven't worked behind the counter steady for ten years. 933

X-Q. 48. Just except occasionally for a short time?

A. The only way I could tell the number of Beech-Nuts per day is an estimate, I can tell you about what we use that goes through the stock room, each store.

X-Q. 49. You spend very little time behind the counter?

A. Very little.

X-Q. 50. Many days you are not at all?

A. I am in the store, every day, every store every day, once a day, sometimes oftener than once a day.

934 X-Q. 51. You don't work behind the counter. How often are you behind the counter?

A. I couldn't tell.

X-Q. 52. Once a month?

A. Yes, and sometimes no. If the girl is busy waiting on people I would step behind and wait on them.

X-Q. 53. You don't work steady behind there as much as once a month?

A. No.

*Re-direct Examination.*

935 R-D. Q. 54. (By Mr. Cavanagh.) You have worked behind the counter in the store?

A. Yes.

R-D. Q. 55. And have sold Beech-Nut cigarettes behind the counter.

A. Yes.

MR. JOSEPH EQUI, a witness called on behalf of P. Lorillard Company, defendant herein, being first duly sworn, deposes and says, as follows, in answer to the interrogatories propounded to him by Mr. Cavanagh, counsel for P. Lorillard Company:

936

Q. 1. (By Mr. Cavanagh.) What is your name, age, residence and occupation?

A. My name is Joseph Equi.

Q. 2. Legal age I suppose and residence?

A. 1699 Northampton Street.

Q. 3. Occupation?

A. I am the manager of the business here.

Q. 4. This business is a confectionery and tobacco and soda water store?

A. Yes, sir; ice cream, soda water.

Q. 5. Address is?

937

A. 359 Dwight Street.

Q. 6. Holyoke, Mass. Did you ever sell the Beech-Nut cigarette here?

A. Yes.

Q. 7. How long have you been selling them in a general way?

A. I couldn't say. We had them when they came to Holyoke, must be over a year ago.

Q. 8. Ever sell the Beech-Nut Scrap tobacco?

A. Yes. We have it now.

Q. 9. Do you know who makes the Beech-Nut cigarettes?

938

A. I suppose the same people that make the tobacco.

Q. 10. Do you know the name of that concern?

A. Lorillard is it?

Q. 11. Lorillard. Do you sell Beech-Nut chewing gum here?

A. Yes.

Q. 12. Did you ever believe the Beech-Nut tobacco or Beech-Nut cigarette was made by the same people that made the gum?

A. No; I don't believe that.

Q. 13. State whether or not you ever had any questions asked you by customers or others that would lead you to believe that they thought the gum was made by the tobacco people?

939

A. Never had customers inquiring about that, whether the gum or tobacco was made by the same people, never had that question made.

Q. 14. Thought it was made by the same people, Beech-Nut cigarettes, as made the scrap tobacco?

A. Yes.

*Cross Examination.*

X-Q. 15. (By Mr. Hinton.) How many of those Beech-Nut cigarettes would you sell here in a day?

A. I should say maybe a box or two a week, carton or two a week, that is about 200.

X-Q. 16. 40 packages a week?

A. About that, about 40.

X-Q. 17. This is mainly a soda fountain?

A. Yes, fountain, sell candy and fruit, cigars.

941 X-Q. 18. When the Beech-Nut cigarettes were put in did the Lorillard man come around and put them in do you remember?

A. That I couldn't say. I don't know whether the jobber introduced the cigarette or the salesman, that I couldn't say. I don't recollect that.

X-Q. 19. How much of that scrap do you sell here, Beech-Nut scrap?

A. It's hard to say, sometimes it sells faster than others. Well, I should say possibly, well, a carton a month, maybe they wouldn't reach a month, the container, I think that is two dozen.

X-Q. 20. How many packages?

A. It varies, sometimes might sell—

942 X-Q. 21. The average would be one a month?

A. Little better than one a month, just a little better, varies all the time.

X-Q. 22. Did you make any effort to remember whether or not you heard any discussion about these cigarettes when they came out, pay any particular attention to it?

A. No.

X-Q. 23. You knew before you saw the goods that they were Lorillard goods?

A. Why, it was written on the package if I remember right, usually on the package who they were made by,

1890

X-Q. 24. You saw it on the package?

943

A. Naturally, a new product, kind of curious to find out who put it out.

X-Q. 25. So you examined the package?

A. Ordinary way you know.

X-Q. 26. That's the way you remember. Who makes the Mogul cigarette, do you know?

A. Mogul? I think the American.

X-Q. 27. Who makes the Murads?

A. Same, American.

X-Q. 28. Who makes the Fatimas?

A. Reynolds.

X-Q. 29. Who makes the Camels?

944

A. Same, Reynolds.

X-Q. 30. Who makes the Helmars?

A. American.

X-Q. 31. Who makes the Lucky Strike?

A. American.

X-Q. 32. Can you name any Lorillard brand of cigarettes except the Beech-Nut?

A. I think the Piedmonts, I wouldn't say for sure. No, I don't think Piedmont.

X-Q. 33. You can't name any other Lorillard brand of cigarettes except the Beech-Nut. Can you name any other Lorillard brands of tobacco except scrap?

945

A. Mechanic's Delight is made by them.

X-Q. 34. Any other?

A. We don't handle all their products. I guess that's about all we handle.

X-Q. 35. Do you know of any other Lorillard products?

A. Unless it is the Lorillard, this yellow snuff is put out by them.

X-Q. 36. That is a snuff, is it?

A. Yes, that is a snuff, think it is; I'm not sure.



946 X-Q. 37. You sell the Murads and Helmars and Moguls?

A. Yes.

X-Q. 38. Sell the Egyptian Dieties?

A. I wouldn't say yes or no. I think we are all out of them but we sell them.

X-Q. 39. Who makes them do you know?

A. Don't remember. I couldn't say.

X-Q. 40. Can you name any Lorillard brands of cigars?

Objected to.

947 By the Witness: Not that I know of.

X-Q. 41. As far as you know they don't make any cigars?

A. Not that I know. If they do we don't carry them.

*Re-direct Examination.*

R-D. Q. 42. (By Mr. Cavanagh.) If you had had any inquiries from customers asking you if the cigarettes were made by the same people that made the gum, you would remember it wouldn't you?

948

Objected to as leading.

By the Witness: Yes, I think I would.

R-D. Q. 43. You wouldn't have any difficulty remembering inquiries along that line?

A. I could recollect them easy enough if I had anyone bring that matter up.

MR. FERDINAND RIGALI, Jr., a witness called on behalf of P. Lorillard Company, defendant herein, being first duly sworn, deposes and says as follows in answer to the interrogatories propounded to him by Mr. Cavanagh, counsel for P. Lorillard Company:

Q. 1. By Mr. Cavanagh: Will you please state your name, age, residence and occupation?

A. Ferdinand Rigali, Jr.

Q. 2. Age?

A. 25.

Q. 3. Residence?

A. 1616 Northampton Street.

Q. 4. Occupation?

A. Fruit dealer.

Q. 5. What store do you work in?

A. Right here. We only have one store.

Q. 6. Address?

A. 773 Dwight Street.

Q. 7. Do you know a store kept by a party by the name of Carlton here in Holyoke?

A. Yes, I do.

Q. 8. Where is that store?

A. Just about four streets from here.

(It is stipulated, the Carlton referred to, is a witness heretofore called for Plaintiff.)

Q. 9. Do you sell the Beech-Nut cigarettes in the store?

A. Yes.

Q. 10. Beech-Nut scrap tobacco?

A. Yes.

Q. 11. Do you know what concern makes those?

A. Yes.

Q. 12. What is it?

A. Lorillard.

952 Q. 13. Do you sell Beech-Nut chewing gum?

A. Yes.

Q. 14. Do you know what concern makes that?

A. Yes; Beech-Nut Packing Company.

Q. 15. Were you ever under the impression that the Beech-Nut cigarettes were made by the same people that make the gum?

A. Not the people.

Q. 16. Will you please state whether or not you ever had any customers ask any questions or make any inquiry which would lead you to believe that they thought the Beech-Nut cigarettes were made by the same people that  
953 made the gum?

A. I have had to my, I think I had about two people ask me. I couldn't say who the people were, just people that came into the store.

Q. 17. How long ago was that?

A. Quite a while ago after they came out one party asked me who made the Beech-Nut cigarettes and went as far as to ask me if the Beech-Nut Packing Company made them. I told them certainly not, that's as far as the argument went. He didn't know probably.

Q. 18. Those are the only two occasions?

A. That's the only two occasions I have had unless  
954 the other boys have had.

Q. 19. About how many customers do you serve a day in this store, in a general way how many coming in, in general?

A. I don't know.

Q. 20. Approximate it.

A. 700, 800, sometimes 500 a day coming in during the day, 500 people

*Cross Examination.*

955

X-Q. 21. By Mr. Hinton: You carry fruit and run a soda fountain here?

A. Yes.

X-Q. 22. Have tables behind?

A. Yes.

X-Q. 23. And carry candy and cigars?

A. Tobacco.

X-Q. 24. Do you do the buying here?

A. Yes; I do.

X-Q. 25. When these Beech-Nut cigarettes came out did a Lorillard salesman come and get you to put them in? 956

A. Yes; there was a salesman to get the trade.

X-Q. 26. You knew they were Lorillard goods before you put them in?

A. Certainly I know they were Lorillard goods. They told me who they were in fact. Naturally, all the boys do when anybody comes in we have a new cigarette such and such a concern, we have other goods that we sell.

X-Q. 27. Did you make any effort to remember, make a note of any comments or inquiries that you had about these cigarettes from your customers?

A. Only those occasions when a certain fellow come in, that's what brought it to my mind. I never even stopped to think about the Beech-Nut Packing Company being in this proposition at all. I buy cigarettes from a concern, know they are made by a cigarette people, naturally they come in, I hadn't the least thing in my mind until this party come in and asked me if it was made by the Beech-Nut Packing Company or who it was made by, being Beech-Nut cigarettes just like other things are made by Lorillard, certain kind of tobacco same name as the other doesn't necessarily have to be the same concern make it We have different kind of 957

958 goods by the same name we have used too, in the George Washington coffee, a long time ago—

Answer objected to by Mr. Hinton as not responsive.

X-Q. 28. You were not paying any particular attention to this at the time, were you, you weren't trying to remember?

A. No.

X-Q. 29. Every time you had an inquiry?

959 A. I was in one way because I was interested in the fact and this party asked me. I had no other inquiries outside of this person. I can't recollect you know.

X-Q. 30. You didn't make a note every time anybody asked you about that.

A. No.

X-Q. 31. You didn't try to remember?

A. No; I didn't make no notes only as to my mental—

X-Q. 32. Who makes the Mogul cigarette do you know?

A. Mogul cigarettes? No; I don't.

X-Q. 33. Who makes the Murads?

960 A. I don't know who makes the Murads. Murads and Helmars are made by the same people, made by the Lorillard people aren't they?

X-Q. 34. Who makes the Helmars?

A. I think the Helmars are made by the same people.

X-Q. 35. Who makes the Camels?

A. Camels made by the Reynolds.

X-Q. 36. Who makes the Fatimas?

A. Fatimas by the Liggett & Myers.

X-Q. 37. Who makes the Lucky Strikes do you know?

A. American.

X-Q. 38. Name any other Lorillard brand of cigarettes?

A. Cigarettes?

X-Q. 39. Yes.

961

A. I don't believe I do know only those, the Beech-Nut, no I don't think I can name other Lorillard outside of that Beech-Nut. 111 I think it was.

X-Q. 40. Can you name any Lorillard brands of chewing tobacco?

A. I can't think of it now, Mechanics' chewing.

X-Q. 41. Any others?

A. No; not any chewing tobacco.

X-Q. 42. How about cigars?

Objected to.

X-Q. 43. How about cigars, can you name any Lorillard brands of cigars?

962

A. No; I don't think we handle any of their cigars at all.

X-Q. 44. You carry quite a lot of chewing tobaccos?

A. Yes.

X-Q. 45. Carry Climax?

A. No.

X-Q. 46. Polar Bear?

A. No.

X-Q. 47. Scrap? B. L.?

A. Yes, we carry B. L.

X-Q. 48. Murads, Moguls and Helmars?

963

A. Yes.

X-Q. 49. And Deities?

A. No.

*Re-direct Examination.*

R-D. Q. 50. By Mr. Cavanagh: You say you handle a George Washington coffee?

A. Yes; we used to handle it and a while ago—

964 R-D. Q. 51. Ever handle any tobacco of George Washington?

A. Tobacco compact? No, we had George Washington smoking tobacco, that's all.

R-D. Q. 52. If you had had inquiries as to whether one person thought the Beech-Nut cigarettes were made by the same people that made the gum you would remember that wouldn't you?

Objected to.

R-D Q. 53. If you had had inquiries?

965 A. On this occasion I remember it this one occasion, that's how you are always yourself.

### STIPULATION

It is hereby stipulated by and between counsel that if GORDON MICHAELS were called as a witness on behalf of P. Lorillard Company, he would testify as follows:

966 My name is Gordon Michaels and I am of lawful age and keep a store at 1012 State Street in the City of Springfield, Mass. In this store I sell soda water, candy, confectionery and tobacco products. I have sold Beech-Nut cigarettes since they first came out about a year and a half ago, and have handled the scrap tobacco some three or more years. I also sell Beech-Nut gum, Beech-Nut popcorn, and have handled Beech-Nut ginger ale. I have been at this place of business for about seven years. I knew that the Beech-Nut cigarettes were made by the Lorillard Company, or the same people that made Beech-Nut scrap tobacco, but never thought that the gum people had anything to do with either. I never had any persons ask if the gum people made the cigarettes so far as I

can remember. This store is located diagonally across the street from 1083 State Street and is also located in the same neighborhood as drug store of Broughton. 967

On cross examination, witness would testify: I sell very little of the Beech-Nut scrap tobacco and would probably average not more than one carton, namely 20 packages, a week of Beech-Nut cigarettes. I made no effort to remember any comments, remarks or inquiries that customers may have made, nor was there any reason why I should do so. I knew the cigarettes were made by the Lorillard Company before I saw them because they were put in by a Lorillard agent who told me they were a Lorillard product. 968

ESTHER G. HALL,  
Stenographer.



970

## UNITED STATES DISTRICT COURT.

## DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company,	}	In Equity No. 3056.
Plaintiff,		
<i>vs.</i>	}	
P. Lorillard Company,		
Defendant.		

## CERTIFICATE.

971

Commonwealth of Massachusetts, }  
 County of Hampden. } *ss.*

972

I, WALTER C. ROSS, a Notary Public within and for the Commonwealth of Massachusetts, County of Hampden, acting as Special Examiner by consent of counsel, do hereby certify that the foregoing depositions of Herbert R. Hooper, William W. Provost, Joseph Equi and Ferdinand Rigali, Jr., were taken in behalf of the defendant, P. Lorillard Company, pursuant to agreement and notice, before me, at Springfield and Holyoke, Massachusetts, beginning August 17th, 1922; that each of the foregoing witnesses was by me duly sworn; that the testimony of said witnesses was taken down in shorthand, under my supervision, by Esther G. Hall, stenographer, well-known to me, and thereafter reduced to typewriting; that the opposing party hereto was represented by Sebastian Hinton, Esq., of Counsel, during the taking of said testimony; that the testimony was taken at Springfield and Holyoke, Mass., beginning August 17th, 1922, and was completed the same day; that the said deposition of each witness was read by said witness before signing the same; except where the sig-

WALTER C. ROSS.

325

nature of witness was waived as indicated in the deposition. 973

I am not connected by blood or marriage with either of the parties hereto, or interested either directly or indirectly in the matter in controversy.

IN WITNESS WHEREOF, I have hereunto set my hand and Official Seal, this 18th day of August, 1922.

WALTER C. ROSS,  
Notary Public.

(SEAL.)

974

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976

IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company

vs.

P. Lorillard Company.

In Equity

No. 3056.

December 11, 1922.

977

Depositions taken on behalf of P. Lorillard Company, defendant, in the above entitled action, pursuant to notice and by agreement of counsel, before Lafayette P. Temple, a Notary Public in and for the City of Baltimore, State of Maryland, acting as Special Examiner by consent of counsel, at his office, 110 East Lexington Street, Baltimore, Maryland, beginning on the 11th day of December, 1922, at 10:30 o'clock a. m.

Present in behalf of the plaintiff, Messrs. Offield, Poole, Hinton & Scott (by Mr. Sebastian Hinton).

Present in behalf of the defendant, Messrs. Meyers, Cavanagh & Whitehead (by Mr. Richard B. Cavanagh and Mr. Thomas L. Preston).

978

SAMUEL RACKMALES, a witness called on behalf of the defendant, being by me first duly sworn, deposes and says as follows:

*Direct Examination.*

By Mr. Cavanagh:

Q. 1. Please state your name, age, residence and occupation.

A. My name is Samuel Rackmales; I am of legal age;

I reside at 856 West Lexington Street, Baltimore, Maryland; my place of business is 115 West Fayette Street; my occupation is that of merchant, specializing in tobaccos. 979

Q. 2. How long have you been engaged as a merchant in the tobacco business?

A. About fifteen years.

Q. 3. How long has your place of business been located at 115 West Fayette Street?

A. Six months.

Q. 4. This is the business section of Baltimore City, is it not?

A. Yes.

Q. 5. Approximately how many customers a day do you serve? 980

A. About five hundred.

Q. 6. And about how many clerks do you employ?

A. Just myself and my daughter.

Q. 7. Do you sell Beech-Nut cigarettes and Beech-Nut scrap tobacco?

A. Yes.

Q. 8. Do you know what company puts out those brands of tobacco?

A. Yes.

Q. 9. What company puts them out? 981

A. P. Lorillard Company.

Q. 10. Do you sell the Beech-Nut Chewing Gum?

A. Yes.

Q. 11. Will you please state whether or not you were ever under the impression that the same people who put out the Beech-Nut scrap tobacco and the Beech-Nut cigarettes also made the Beech-Nut chewing gum?

A. I have always known that they were two separate and distinct units. I have always known that.

Q. 12. That is that the cigarette and the tobacco were made by one concern and the chewing gum by another?

982 A. Yes, they are different concerns entirely.

Q. 13. Did you ever hear of the Lorillard Company putting out any Beech-Nut chewing gum or any food products?

A. I have never heard of their producing anything in the nature of food products, not to my knowledge.

Q. 14. Will you please state whether or not you ever had any questions asked you or ever heard any comments or inquiries from customers which would lead you to believe that they thought the same concern which put out the Beech-Nut cigarette and the Beech-Nut scrap tobacco also put out the Beech-Nut chewing gum and the Beech-Nut food products?

983

A. In my experience of fifteen years in handling both products I have yet to find one customer to ask that question.

Q. 15. You have never had any such question asked you?

A. Never in the history of fifteen years merchandising have I ever had one person ask that question.

Q. 16. From your experience in the business, what would be your opinion of any customer who would confuse tobacco with chewing gum.

984 A. As far as opinions go, I would figure that the average man has enough intelligence to realize that a tobacco is not a food. That is the way I look at it. A food product and a tobacco product I should figure are two different and separate items entirely, there is just as much difference between them as there is between a horse and an automobile.

Q. 17. You sell the Beech-Nut scrap tobacco, do you?

A. Yes.

Q. 18. Is that a good seller?

A. Fairly good.

Q. 19. I understand you also sell the Beech-Nut cigarettes?

A. Yes.

Q. 20. Have you ever had any person ask you for Beech-Nut scrap tobacco or Beech-Nut Cigarettes made by the Beech-Nut Packing Company? 985

A. Never.

Q. 21. You have never sold any goods under those conditions?

A. No, sir; no one has ever asked that.

*Cross Examination.*

By Mr. Hinton:

X-Q. 1. What were you doing before you opened this store? 986

A. I was in the same line of business. Previous to opening this store I was at 506 North Eutaw Street.

X-Q. 2. You had another tobacco store, had you?

A. Yes, I had another tobacco store.

X-Q. 3. Between what years did you have that?

A. Between 1918 and 1921.

X-Q. 4. Before that what did you do?

A. Before that I was with A. A. Brager.

X-Q. 5. What do they do?

A. That is a large department store here in Baltimore I was manager of that department for seven consecutive years. 987

X-Q. 6. That would be from 1911 to 1918?

A. Yes.

X-Q. 7. And before that, what did you do?

A. Before that I was with Bernheimer Brothers.

X-Q. 8. What do they do?

A. That is another department store here in Baltimore. I was general salesman for everything in the house.

X-Q. 9. Did you have any business connection with tobacco before 1911?

988 A. At the time I was with Bernheimer I don't believe I did.

X-Q. 10. Do you sell many of these Beech-Nut cigarettes?

A. I sell on an average of a thousand a week.

X-Q. 11. That is fifty packages?

A. Yes.

X-Q. 12. How many did you sell when they first came out, do you remember?

989 A. When they first came out I don't believe there was any difference as far as the sales went; it has not been an extremely big seller with me. I should judge that is about an average of what I have been selling.

X-Q. 13. Do your customers ever ask you who makes the Camel cigarettes?

A. No, sir..

X-Q. 14. Do they ever ask you who makes the Fatima cigarettes?

A. No, sir.

X-Q. 15. Are they in the habit of discussing with you who makes the cigarettes, or telling you who they think makes the cigarettes?

990 A. I doubt if I have had one customer since I have been in business to ask questions as to who makes the products.

X-Q. 16. Do they talk to you on other subjects?

A. We converse on nearly every subject as far as that is concerned, but I have yet to find a person to start a conversation with reference to the manufacture.

X-Q. 17. You say that you have been selling this scrap tobacco for fifteen years, is that correct?

A. Approximately. To count back, there is eight and four, that would be twelve years, to be exact, although I have had lines of tobacco and cigarettes for myself previous to that, on my own hook, off and on, maybe

for a year or so after I left Bernheimer's. To come right down to the real years, I have been handling that brand for eleven years. 991

X-Q. 18. That is this package of Beech-Nut scrap which Mr. Cavanagh showed you and which is marked as an exhibit in this case?

A. Yes.

X-Q. 19. You have been handling that eleven years, you say?

A. Yes.

X-Q. 20. How long have you been handling the Beech-Nut cigarettes?

A. Since they first put them on the market. 992

X-Q. 21. When was that?

A. About nine months ago, I guess.

X-Q. 22. That would be about the spring of 1922?

A. I think that is when they started. I am not familiar with just when they did put them out. Such things as that do not lie on my brain but I figure about nine months, maybe a month or two longer.

X-Q. 23. Do you think you got them as soon as they came in this territory?

A. Yes.

X-Q. 24. You know that you did, don't you?

A. Yes. 993

X-Q. 25. Your relations with the Lorillard Company have always been very satisfactory, have they?

A. Sometimes we have had a little disquite or two, but it does not amount to anything. You know how it is in business, you will have your little troubles.

X-Q. 26. You carry a full line of their goods, do you?

A. Almost.

X-Q. 27. How long have you done that?

A. Ever since I have been in business.



994 *Re-direct Examination.*

By Mr. Cavanagh:

R-D Q. 1. What is the general reputation of the Lorillard Company in their line of business, so far as you know?

A. Their reputation is that I think they are open and above-board, clean.

R-D Q. 2. They are very large tobaccoists, aren't they?

A. Yes.

995 R-D Q. 3. You do not know exactly the date when you first sold the Beech-Nut Scrap Tobacco, do you?

A. I can get the exact date when I started in with Brager. They have the records of it up there. The years come and go and I can not run back to the exact date myself.

R-D Q. 4. You can tell the difference at a glance between a package of Beech-Nut Cigarettes and a package of Beech-Nut Scrap Tobacco and a package of Beech-Nut Chewing Gum, can't you?

A. Absolutely.

996 R-D Q. 5. They each have an individuality of their own, haven't they, as to form and shape?

A. Positively. This is a cigarette package and if you offer this to a man as chewing gum he would tell you right away that those were cigarettes. You could not confuse them in a thousand years. The gum has an individual packing, ninety-nine out of every hundred packages of gum are packed in that way. I have yet to see one package of chewing gum packed that way (indicating cigarette package).

R-D Q. 6. Does the same apply to the scrap tobacco?

A. Yes, the difference is so vast that a child could discern the difference.

MORRIS J. GOODMAN--DIRECT.

333

*Re-cross Examination.*

997

By Mr. Hinton:

R-X Q. 1. You are quite sure, then, that no customer would ever mistake a package of chewing gum for a package of cigarettes?

A. No customer would ever confuse either the packing or anything else.

R-X Q. 2. You mean that he would know that one was cigarettes and the other was gum?

A. Yes.

(Signature of witness waived by consent of counsel.)

998

MORRIS J. GOODMAN, a witness called on behalf of the defendant, being by me first duly sworn, deposes and says as follows:

*Direct Examination.*

By Mr. Preston:

Q. 1. Please state your name, age, residence and occupation.

999

A. My name is Morris J. Goodman; my place of business is 31 East Baltimore Street; my home address is 3100 Holmes Avenue, Baltimore, Maryland; occupation, proprietor of Goodman & Miller; I am of lawful age; my business is that of confectioner and tobacconist.

Q. 2. In your store here what sorts of goods do you handle?

A. Candies, cigars and sodas.

1000 Q. 3. Do you sell Beech-Nut Scrap Tobacco?

A. We do.

Q. 4. How long have you sold it?

A. Ever since I have been in business, about seven years.

Q. 5. Do you sell the Beech-Nut Cigarettes?

A. Yes.

Q. 6. Do you sell Beech-Nut Chewing Gum?

A. I do.

Q. 7. Do you sell any other Beech-Nut products?

A. Beech-Nut mints.

1001 Q. 8. Were you ever under the impression that the Company that makes the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes also made the Beech-Nut Gum and the Beech-Nut Mints?

A. No, I was not.

Q. 9. You always knew what company made the Beech-Nut Tobacco?

A. I did.

Q. 10. Did you ever hear any comments or inquiries or remarks from any of your customers which indicated that they thought that the same company made the food products and also the tobacco products?

A. No, I did not.

1002 Q. 11. You never heard any comment of that sort?

A. No, sir.

Q. 12. Do you think that a customer could confuse any one of those three packages (exhibiting to witness package of Beech-Nut Scrap Tobacco, Beech-Nut Cigarettes and Beech-Nut Gum)?

A. No.

Q. 13. Do you think any customer could mistake the gum package for the cigarette package or the gum package for the scrap tobacco package?

A. Do you mean in package form?

Q. 14. Yes.

A. No.

Q. 15. The cigarette package has a personality of its own, isn't that true? 100

A. I don't know whether it has or not, but I guess it will have in course of time. I can not tell yet. It is selling pretty fair.

Q. 16. I do not mean particularly that cigarette package, but any package of cigarettes has an individuality of its own, has it not?

A. Yes, individual wrappers. We can generally tell by the box what kind of cigarettes they are. We never look at the names of any cigarettes, practically. Any man in the business does not look at the name Piedmont or Chesterfield or Murad or Lucky Strike or Sweet Caporal. We tell them from the back, like this; we never look at the front mark. 100

Q. 17. Do you sell Chesterfield pipes here?

A. Yes.

Q. 18. And you also sell Chesterfield cigarettes?

A. Yes.

Q. 19. Are they made by the same company?

A. That I do not know, but I do not think so. I think they are made by the W. D. C. Company.

*Cross Examination.*

By Mr. Hinton: 100

X-Q. 1. Do the W. D. C. Company make the pipe?

A. Yes, but I don't know whether they make the Chesterfield or not.

X-Q. 2. What is written on the front of this package of Beech-Nut cigarettes, do you know?

A. I never took that much interest to know.

X-Q. 3. Did you ever see the manufacturer's name written on it anywhere?

A. Yes, P. Lorillard's name is on the back of it.

1006 X-Q. 4. Who put in these Beech-Nut Cigarettes for you, what salesman, do you remember?

A. That I can not remember; that was too far back.

X-Q. 5. Was it some Lorillard salesman?

A. I am quite sure it was.

X-Q. 6. Some Lorillard salesman who came around and introduced them?

A. Yes, but I don't know exactly who it was.

X-Q. 7. You knew before you saw the goods that they were Lorillard's products?

A. Yes, the minute he showed me the cigarette I knew it was a Lorillard man.

1007 X-Q. 8. The tobacco salesman brought them in?

A. Yes.

X-Q. 9. How much of a sale do you have for the Beech-Nut Chewing Gum?

A. A very big demand, one of the biggest demands we have on gum.

X-Q. 10. What were you doing before you operated this store?

A. I was connected with the Jaffe Company in the same line of business.

X-Q. 11. What office?

1008 A. I had charge of Washington Hotel Cigar Store, in Washington, D. C.

X-Q. 12. What does that company do?

A. They are out of existence right now.

X-Q. 13. What did they do when they were in existence?

A. Sold cigars and cigarettes and tobacco. I was one of the firm of Jaffe & Company.

X-Q. 14. During what period was that?

A. During 1917 to 1920.

X-Q. 15. What were you doing before that?

A. I used to work with the Globe Cap Company, selling hats and caps.

X-Q. 16. Did you make any special effort to make a note of or remember anything that customers might say about this question of who made the Beech-Nut Cigarette? 1009

A. No, I don't remember anybody asking me that question.

X-Q. 17. There is no reason why you should have remembered it, is there?

A. No. Nobody asked me that I can recollect.

X-Q. 18. And there is no reason why you should have remembered it if there had been?

A. No.

X-Q. 19. When did the cigarettes come out, do you remember? 1010

A. I don't think they have been out very long; I guess about a year, isn't it?

X-Q. 20. That would be December, 1921.

A. If it is about a year it would be then, yes.

X-Q. 21. How long have you been handling the Beech-Nut Scrap Tobacco?

A. I have been handling it here for about four years.

X-Q. 22. What sort of demand do you have for the scrap tobacco?

A. A bigger demand than for any scrap tobacco we have. 1011

X-Q. 23. How do you sell scrap here in comparison to plug tobacco?

A. This is not a big tobacco section around here, but we sell more scrap than we do plug.

X-Q. 24. Is that true of this territory generally?

A. We do not have the class of trade in this section for the chewing tobacco that we have for the plug tobacco.

X-Q. 25. Who makes the Lucky Strike Cigarette?

A. The American Tobacco Company.

1012 X-Q. 26. Do you know who makes most of the brands of cigarettes that you sell?

A. That is pretty hard to tell, because some of the bigger sellers are made by Liggett & Myers, and R. J. Reynolds and the American Tobacco Company and the P. Lorillard Company. I think they are pretty well divided, myself. What one has not a demand for the other one has in the way of brands. The Liggett & Myers Company has the biggest selling brands and the American Tobacco Company has the most brands. P. Lorillard & Company has a great many brands, so I think it is pretty well divided myself.

1013 X-Q. 27. How many brands do you sell?

A. Of tobacco?

X-Q. 28. Of cigarettes.

A. I couldn't tell you offhand. I know there are a good many of them.

*Re-direct Examination.*

By Mr. Preston:

1014 R-D Q. 1. Did you ever see a package put out by the Beech-Nut Packing Company that looked like that cigarette package?

A. No. I am not acquainted with the Beech-Nut products. I have only handled the gum and I could not tell what other packages they put out. We handle the Beech-Nut gum and Beech-Nut Mints, and they are nothing like the package of the Beech-Nut Cigarette.

R-D Q. 2. Is the demand for the gum as good now as it was before the Cigarette came on the market?

A. It is as good as ever we had it.

(Testimony of witness concluded.)

(Signature of witness waived by consent of counsel.)

101

CARL W. JACOBSON, a witness called on behalf of the defendant, being by me first duly sworn, deposes and says as follows:

*Direct Examination.*

By Mr. Preston:

Q. 1. State your name, age, residence and occupation.

A. My name is Carl W. Jacobson; I am of lawful age; my business address is 3311 Pennsylvania Avenue; Occupation; delicatessen merchant.

Q. 2. Do you sell tobacco here in your delicatessen store?

101

A. Yes.

Q. 3. Do you sell Beech-Nut Scrap Tobacco?

A. No.

Q. 4. Do you sell Beech-Nut Cigarettes?

A. Yes.

Q. 5. Do you sell Beech-Nut Chewing Gum?

A. Yes.

Q. 6. Do you sell any of the other Beech-Nut products?

A. Beech-Nut Peanut Butter.

101

Q. 7. Did you ever think that the same company that manufactured both the Beech-Nut Cigarette and the Beech-Nut Scrap Tobacco also made the Beech-Nut Chewing Gum?

A. No, never, it is a different kind of business altogether.

Q. 8. Did you ever hear any comments or inquiries or remarks from any of your customers which indicated that they were under the impression that the same Company made both the cigarette and the chewing gum?

A. No, I never did.



1018 Q. 9. About how many customers do you have here a day?

A. Between two hundred and fifty and three hundred.

Q. 10. Do you think those packages look alike (displaying to witness a package of Beech-Nut Gum and Beech-Nut Cigarettes)?

A. No, I do not.

Q. 11. A cigarette package has an appearance of its own which in no way resembles the appearance of a gum package isn't that so?

1019 A. I would answer that by saying no, they are two different looking packages altogether.

Q. 12. Do you know what company makes the Beech-Nut Cigarette?

A. After I had a conversation with you I do, but I didn't know it before.

Q. 13. What would you think of a man who came into your store wanting to buy Beech-Nut Cigarettes and would take a package of Beech-Nut Gum in place of it?

A. It could not happen.

Q. 14. You sell Del Monte Butter here, do you not?

A. No, I used to handle it.

1020 Q. 15. At the same time that you sold Del Monte Butter, did you sell other products called Del Monte?

A. Yes.

Q. 16. And they were made by different companies, were they?

A. Yes, entirely different.

Mr. Hinton: This line of testimony is objected to unless the labels involved are produced.

*Cross Examination.*

1021

By Mr. Hinton:

X-Q. 1. How many of these Beech-Nut Cigarettes do you sell in a week?

A. Very little.

X-Q. 2. How many do you buy?

A. A carton at a time only, ten packages.

X-Q. 3. How often do you buy a carton of the Beech-Nut Cigarettes?

A. I have not bought any since I have been here, three months.

X-Q. 4. Then your sales in the Beech-Nut Cigarettes are negligible? 1022

A. Very slow.

X-Q. 5. Have you any on sale now?

A. Yes, I have a few packages.

X-Q. 6. How long have you had them?

A. About three months.

X-Q. 7. And one carton of ten packages lasts you three months?

A. Yes.

X-Q. 8. Ten packages of the cigarettes supplies your call for them for three months?

A. Yes, it is a very slow seller with me. 1023

X-Q. 9. And you have no fixtures here to display your cigarettes?

A. They are displayed the same as any other cigarette.

X-Q. 10. But they are up on the wall, nobody would notice them particularly?

A. No.

X-Q. 11. What Beech-Nut products do you say you sell?

A. Peanut Butter and Chewing Gum.

1024 X-Q. 12. Is that all?

A. That is all.

X-Q. 13. Will you please look around your store and tell me what those bottles are up there?

A. Catsup.

X-Q. 14. You sell Beech-Nut Catsup, do you?

A. That is the same people that make the Peanut Butter.

X-Q. 15. Do you sell any other product that you can think of that is made by the Beech-Nut people?

A. Not that I know of; I know there is a Beech-Nut Tobacco, but I don't handle it.

1025 X-Q. 16. Who makes that, do you know?

A. If I handled it I would know, but I imagine it is the same people who make the cigarettes.

X-Q. 17. But you don't know who they are?

A. I know now, the P. Lorillard Company, but I did not know it before. I never expected that the Chewing Gum people manufactured cigarettes.

X-Q. 18. Do you see any resemblance between the oval device on the package of gum and that on the package of cigarettes?

A. None whatever.

X-Q. 19. Absolutely different?

1026 A. Absolutely different.

X-Q. 20. No similarity of any kind?

A. Not to my eye. If I had looked close maybe there would be, but I don't see any.

X-Q. 21. They are totally different?

A. Totally different, package and wrapper and everything.

X-Q. 22. I am not talking about the wrapper.

A. The wrapper has got the oval mark on it, you see. If you take the oval off you see nothing but the silver paper on there.

X-Q. 23. I am talking about the oval device that appears on the package of gum and on the package of cigarettes? 1025

A. It is different altogether, no similarity at all.

X-Q. 24. No suggestion of similarity?

A. No.

X-Q. 25. And it is impossible to think that one resembles the other in any way?

A. Yes.

X-Q. 26. Just as different as night and day?

A. As different as a can of tomatoes of one kind and a can of tomatoes of another kind with a different label on. 1028

X-Q. 27. Now regarding this Del Monte products, will you show me those packages that you are talking about?

A. I haven't got the Del Monte butter here now; I don't handle it any more, but I had it here. My brother-in-law packs it.

X-Q. 28. He made the Del Monte butter?

A. He is incorporated under the name of the Del Monte Company.

X-Q. 29. Is he still making it?

A. Yes, you can get it right up the street.

X-Q. 30. How long has he been making it? 1029

A. About a year. Before that he packed under a different name.

X-Q. 31. You do not know why he took the name of Del Monte for the butter, do you?

A. No, sir, just having a well advertised name, nothing else.

X-Q. 32. He thought the advertising of the name Del Monte would sell it?

A. Yes, it is a good name and he just picked that name.

X-Q. 33. And it is widely advertised?

1  
2  
1  
8

1030 A. Yes, there are Del Monte fruit packers and the Del Monte fish packers and they are different people altogether. The Del Monte people are in California, and it is absolutely a different concern. That has nothing to do with the Del Monte Fruit Packing company at all.

Mr. Hinton: The answer is objected to as not responsive to the question, and as voluntary on the part of the witness.

1031 X-Q. 34. Did you ever display any placards or posters or signs about these Beech-Nut Cigarettes, do you remember?

A. I displayed it, but not in this store. I displayed it in the store I had before.

X-Q. 35. How long ago was that?

A. About two years ago.

X-Q. 36. You never sold the scrap tobacco, you say?

A. No.

X-Q. 37. During the time that you have testified a package of these Beech-Nut Cigarettes has been lying on the table in front of you and you have been handling it, have you not?

1032 A. Yes.

X-Q. 38. I wonder if you can tell me what is written on that package?

A. No, sir. I don't know what is written on any package.

X-Q. 39. You would not notice that?

A. No, I do not have time to read anything like that.

X-Q. 40. I show you this name through the wax paper on the front; can you see that?

A. Yes.

X-Q. 41. What is that name?

A. P. Lorillard Company.

X-Q. 42. But you had not noticed it before I showed it to you? 1033

A. As I told you before, I never took time to read any packages. I do not bother with who packs them. What business man thinks about looking at a package of cigarettes? I only wish I sold enough of them. I could sell a thousand packages a week without knowing who packs them.

*Re-direct Examination.*

By Mr. Preston:

R-D Q. 1. Do you sell much of the Beech-Nut Chewing Gum? 1034

A. No, I don't sell much of that, either. You could find maybe a box or a box and a half in here.

R-D Q. 2. Do you sell Sunshine Biscuits?

A. Yes.

R-D Q. 3. Do you sell Sunshine Cigarettes?

A. No.

R-D Q. 4. Do you sell Blue Ribbon Salmon and Blue Ribbon Tuna Fish?

A. Yes, the Blue Ribbon fish.

R-D Q. 5. Do you sell Blue Ribbon Playing Cards? 1035

A. No.

R-D Q. 6. Do you sell Blue Ribbon Tobacco?

A. No, sir.

Mr. Hinton: All this line of testimony is objected to unless the labels involved are produced. It is objected to as irrelevant and immaterial and also as entirely outside of the line of cross examination.

R-D Q. 7. Were you ever under the impression that the Company that makes Beech-Nut Gum and Beech-Nut Peanut Butter made the Beech-Nut Cigarettes?

- 1036 A. No, I was never under that impression, because it is a different line altogether.

*Re-cross Examination.*

By Mr. Hinton:

R-X Q. 1. What were you doing before you opened this store?

A. I was a salesman in the same line.

R-X Q. 2. Delicatessen line?

A. Yes.

- 1037 R-X Q. 3. How long were you a salesman in the delicatessen line?

A. I have been in that business on the street for the last fifteen years. I have not done anything else but selling, traveling and city salesman.

(Testimony of witness concluded.)

(Signature of witness waived by consent of counsel).

THEODORE HAVELMAN, a witness produced on behalf of the defendant, being by me first duly sworn, deposes and says as follows:

1038

*Direct Examination.*

By Mr. Preston:

Q. 1. Please state your name, age, residence and occupation.

A. My name is Theodore Havelman; my address is 957 Pennsylvania Avenue; my business and home address are the same; I am of lawful age; my occupation is that of clerk in a general store. This is my brother's place.

Q. 2. What sort of goods do you sell in your store here? 103

A. I have tobacco, ties and leather goods, almost anything of that kind.

Q. 3. Do you sell stationery here?

A. Yes.

Q. 4. And you sell playing cards?

A. Yes, sir.

Q. 5. Postals?

A. Yes, anything in the stationery line.

Q. 6. Baseballs and toilet articles?

A. Yes, baseballs and gloves and toilet articles.

Q. 7. And flash lights?

1040

A. Yes.

Q. 8. And cuff buttons?

A. Yes, a little of everything. This is a general store.

Q. 9. Do you sell Beech-Nut Scrap Tobacco here?

A. Yes.

Q. 10. How long have you handled that?

A. I guess two or three years or more; I couldn't say exactly; I have handled it ever since it has been on the market.

Q. 11. Do you handle the Beech-Nut Cigarette?

A. Yes.

Q. 12. Do you handle the Beech-Nut Chewing Gum? 1041

A. Yes.

Q. 13. Do you handle any other Beech-Nut products?

A. Not outside of the cigarettes and the Scrap Tobacco.

Q. 14. Did you ever think that the company that makes the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarette also makes the Beech-Nut Chewing Gum?

A. No, I have no such idea.

Q. 15. Did you ever hear any remarks or inquiries or comments from your customers which indicated that they were under the impression that the same company



1042 made the Beech-Nut Tobacco that makes the Beech-Nut Chewing Gum?

A. No, I have not.

Q. 16. About how many customers do you have in and out of your store a day?

A. A hundred or a hundred and fifty and sometimes two hundred.

Q. 17. Is the Beech-Nut Serap Tobacco a good seller with you?

A. No, not here.

Q. 18. Is the Beech-Nut Gum a good seller?

A. Not much. I don't believe I sell a package in a month.

1043 Q. 19. How long have you handled the Beech-Nut Chewing Gum?

A. I could not say that exactly. I guess for years, since it has been on the market. But as a rule the colored people all they know is Wrigley's Chewing Gum. Of course a white person now and then will call for Beech-Nut Gum, but it is very seldom called for among the colored people.

Q. 20. (Displaying to witness package of Beech-Nut Serap, Beech-Nut Cigarettes and Beech-Nut Gum): Do you think that the Beech-Nut Cigarette package that I  
1044 now show you looks like the Beech-Nut Chewing Gum package?

A. No, only in the name, that is all I can see. I do not see any similarity there. One has a red band and the other is just plain white.

Q. 21. What would you think of any one who would take this chewing gum package as a substitute for the cigarette package?

A. I do not think a man who wants cigarettes would take gum, nor do I think the man that wanted gum would take cigarettes.

Q. 22. If he wanted cigarettes he could not possibly think he was getting them if he got this package, could he? 1045

A. No. If I went in for a package of chewing gum I am not going to let them give me cigarettes, and if I want cigarettes I don't want chewing gum.

Q. 23. Do you handle Mogul playing cards?

A. Yes.

Q. 24. And do you sell Mogul cigarettes?

A. Yes.

Q. 25. Do you sell Sunshine Cigarettes?

A. Yes.

Q. 26. And do you sell Sunshine Biscuit?

1046

A. No, we don't handle them.

Mr. Hinton: This line of testimony is objected to unless the labels involved are produced.

Q. 27. Will you give me a package of the Mogul playing cards and a package of Mogul cigarettes, if you please?

(Packages produced by the witness and handed to counsel.)

Q. 28. Did you ever suppose that the same company made the playing cards and the cigarettes? 1047

A. No, I would not think so.

Q. 29. Why is that, why would you not think so?

A. I never gave the cigarette people or these people credit for making cards. I imagine that they only handle certain stuff in their line.

1048 *Cross Examination.*

By Mr. Hinton:

X-Q. 1. How many of these Beech-Nut Cigarettes do you sell here in a week?

A. Sometimes one, two or three or four packages.

X-Q. 2. How much of the Scrap Tobacco do you sell?

A. About a dozen a week. There is not much scrap sold in this neighborhood.

X-Q. 3. About how much of it do you buy?

A. About two or four dozen.

1049 X-Q. 4. How often do you buy the cigarettes?

A. The cigarettes I generally buy a thousand of at a time. I guess six hundred will last for some time.

X-Q. 5. That is you buy ten cartons?

A. Five cartons, two hundred in a carton. And other times I mix them up and only buy one carton.

X-Q. 6. You say this store is in the colored section of the City?

A. Yes, it is all colored through here.

X-Q. 7. Most of your customers are colored people?

A. Yes, mostly all colored.

1050 X-Q. 8. You would not call it a prosperous or wealthy section of town, would you?

A. No, not exactly. It is all working people that come here, laboring people.

X-Q. 9. And you sell very little Beech-Nut Chewing Gum?

A. Very little.

X-Q. 10. You never paid any particular attention to any comments or remarks that your customers might have made, did you?

A. No, sir.

X-Q. 11. There was no reason why you should, was there?

A. No.

X-Q. 12. Do you know who makes the Camel Cigarettes? 1051

A. I think Reynolds makes them.

X-Q. 13. Do you know who makes the Fatimas?

A. I think the Liggett & Myers people make them, but I am not sure. I never went that close to look at the name.

X-Q. 14. Do you know what is written on the package of Beech-Nut Cigarettes?

A. I know the name Lorillard is on there.

X-Q. 15. When did you first notice that?

A. I have noticed that at times on account of ordering them through different jobbers. 1052

X-Q. 16. Who brought the cigarettes in here at first, some Lorillard salesman?

A. I could not say. My brother was here at that time.

X-Q. 17. You do not remember?

A. No, sir.

X-Q. 18. Your store consists of one room about fifteen feet wide, would you say, and about twenty-five feet deep?

A. I imagine so.

X-Q. 19. And you live over the store?

A. Yes. 1053

X-Q. 20. How many people work here in the store?

A: Just us two brothers. Now and then my mother or sister may come in the store while we are eating, or something like that.

*Re-direct Examination.*

By Mr. Preston:

R-D Q. 1. If there had been a considerable number of remarks which indicated confusion as to the maker of

1054 the Beech-Nut Tobacco and the Beech-Nut Gum, would you or not have remembered it?

A. I should think so, if I heard it. But there is not one out of a thousand who would ever think of looking at a name on any package.

Mr. Hinton: That is objected to as an opinion of the witness.

1055 The Witness: I am only giving my opinion now. If they want Beech-Nut Tobacco or Beech-Nut Gum, they are not worrying about who makes it, as long as they see the name on there. It is just like a new firm coming along and putting tobacco on the market, they don't ask you who makes it, or who is putting it out, they will buy it and if they like it they will buy it again, otherwise they will not buy it. If a man wants a pack of chewing gum, in my estimation, he doesn't want a pack of cigarettes, and if he wants cigarettes he don't want chewing gum.

(Testimony of witness concluded.)

(Signature of witness waived by consent of counsel.)

1056 ELMER C. KAISS, a witness produced on behalf of the defendant, being by me first duly sworn, deposes and says as follows:

*Direct Examination.*

By Mr. Preston:

Q. 1. Please state your name, age, residence and occupation.

A. My name is Elmer C. Kaiss; my business address is 1121 Light Street, Baltimore, Maryland; res-

idence, 1131 William Street; my occupation is that of manager of J. F. Obrecht, wholesale and retail tobacco. 1057

Q. 2. In addition to tobacco, what sorts of stuff do you sell in your store?

A. Pipes, leather goods, Eversharp pencils, Wahl pens and razors, razor blades, smoking sets.

Q. 3. Playing cards?

A. Yes, playing cards, in fact, anything that you would find in this kind of business.

Q. 4. Do you sell Beech-Nut Scrap Tobacco?

A. Yes.

Q. 5. How long have you sold it?

A. I don't know how long it has been on this market. We have handled it as long as it has been on this market. 1058

Q. 6. Do you sell Beech-Nut Cigarettes?

A. Yes.

Q. 7. Have you sold them since they have come out on this market?

A. Yes.

Q. 8. Do you sell Beech-Nut Chewing Gum?

A. Yes.

Q. 9. Do you sell any other Beech-Nut products?

A. Not that I know of, no.

Q. 10. Were you ever under the impression that the Company that makes the Beech-Nut tobacco and the Beech-Nut Cigarette also made the Beech-Nut Chewing gum? 1059

A. No, sir.

Q. 11. Did you ever hear any comments or inquiries or remarks from any of your customers which indicated that they were under the impression that the same company that makes the Beech-Nut Cigarette and the Beech-Nut Scrap also made the Beech-Nut Chewing Gum?

A. No.

1060 Q. 12. Do you think that the cigarette package and the gum package look alike?

A. No, I can not say I do.

Q. 13. What would you think of a man who can be so confused as to take Beech-Nut Gum if he wanted Beech-Nut Cigarettes?

A. He could not do anything like that, I am sure.

Q. 14. You think a man would be crazy who could confuse those things, don't you?

A. Certainly I should think he would be.

Q. 15. Do you sell Chesterfield pipes?

A. Yes.

1061 Q. 16. And do you sell Chesterfield Cigarettes?

A. Yes.

Q. 17. Do you sell Velvet pencils?

A. Yes.

Q. 18. And Velvet tobacco?

A. Yes.

Q. 19. Did you ever hear of anybody thinking that the Chesterfield pipe and the Chesterfield cigarettes were made by the same company?

A. No, sir.

Q. 20. Or that the Velvet pencils and the Velvet tobacco were made by the same company?

1062 A. No, sir.

Q. 21. About how many customers do you have here a day?

A. About three hundred and fifty on an average.

*Cross Examination.*

By Mr. Hinton:

X-Q. 1. How long have you been in this store?

A. About ten or eleven years.

X-Q. 2. What did you do before that?

A. I was in a general house furnishing store. 1063

X-Q. 3. What did they sell there?

A. Anything pertaining to the household, cooking utensils, china ware, bricabrac and so forth.

X-Q. 3. For the past ten or twelve years you have been in the tobacco lines, selling tobacco at this store?

A. Yes.

X-Q. 4. How are the Beech-Nut Cigarettes going, are you selling many of them now?

A. At the present time they are a little slow in sales around here. Of course you can not always blame that on the brand, because it is due to prices at times.

X-Q. 5. Do you remember when you put them in? 1064

A. I think it has been over a year ago. I guess about a year and a half.

X-Q. 6. You are not making any effort to make a note of or remember instances where people may have made remarks to you or inquiries about the cigarettes, are you?

A. I do not quite understand you. Remarks about the cigarettes?

X-Q. 7. Yes, about the Beech-Nut cigarettes and who made them?

A. No.

X-Q. 8. You did not make any effort to remember whether there were any such remarks or not, did you? 1065

A. Remarks about who makes the goods?

X-Q. 9. Yes.

A. No, they can see that plain enough; it is on the front of the package.

X-Q. 10. As a matter of fact, when those cigarettes were put in some Lorillard man came and put them in, didn't he?

A. Yes.

X-Q. 11. And you knew before you saw the goods who they were made by?



1066 A. Yes.

X-Q. 12. I suppose you had been handling the scrap tobacco so long that you do not remember about when that came out?

A. No, I can not remember how long ago it was, but it must have been ever since it was on this market, I am quite sure.

*Re-direct Examination.*

By Mr. Preston:

1067 R-D Q. 1. If there had been a considerable number of remarks among your customers about who made the Beech-Nut Gum or who made the Beech-Nut Cigarettes, you would have remembered it, wouldn't you?

A. Yes, I am quite sure I would, but I don't know of any one making any remark to me in regard to that.

(Testimony of witness concluded.)

(Signature of witness waived by consent of counsel.)

(The taking of depositions was thereupon adjourned until to-morrow morning at ten o'clock.)

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December 12, 1922.

The taking of depositions was then adjourned to this 12th day of December, 1922, at ten o'clock a. m., at the same place, at which time and place I attended, and, in the presence of counsel for the respective parties, proceeded to take the following depositions, that is to say:

JOSEPH H. NELSON, a witness produced on behalf of the defendant, being by me first duly sworn, deposes and says as follows:

1070

*Direct Examination.*

By Mr. Preston:

Q. 1. Will you please state your name, age, residence and occupation?

A. My name is Joseph H. Nelson; I live at 907 Harlem Avenue and have my business at that address also; my occupation is that of merchant, candy, stationery, handkerchiefs and so forth. I also have a branch office of the post office located in the store. My store is situated in West Baltimore out of the central business section.

1071

Q. 2. Do you sell Beech-Nut Scrap Tobacco?

A. Yes.

Q. 3. How long have you sold that?

A. A couple of years, I judge.

Q. 4. Is it a good seller?

A. Fairly good seller as a scrap tobacco.

Q. 5. Do you sell Beech-Nut Cigarettes?

A. Yes.

- 1072 Q. 6. How long have you sold those?  
A. Since they have been on the market.  
Q. 7. Do you sell Beech Nut Chewing Gum?  
A. Yes.  
Q. 8. How long have you sold that?  
A. I guess five or six years. It has been many years I know.  
Q. 9. Do you know what company makes the Beech-Nut Scrap Tobacco?  
A. P. Lorillard Company.  
Q. 10. Were you ever under the impression that the same Company made the Beech-Nut Gum and the Beech-Nut Cigarette?  
1073 A. No, sir.  
Q. 11. About how many customers a day do you have here?  
A. About seven hundred or seven hundred and fifty.  
Q. 12. Did you ever hear any comments or inquiries or remarks of any kind from your customers which indicated that they thought the same company made both the tobacco and the gum?  
A. No, sir.  
Q. 13. If there had been any considerable number of remarks of that sort, would you have remembered it?  
1074 A. Yes, I am sure I would.  
Q. 14. Do you think the cigarette package and the gum package look alike?  
A. No, sir.  
Q. 15. That name, P. Lorillard, on the front of the package, can that be easily read?  
A. I believe so.

Mr. Hinton: The question is objected to as leading, and further objected to on the ground that it calls for the opinion of the witness and is secondary evidence.

1234

Q. 16. Would you prefer to have tobacco made by a straight tobacco company, or by a company which was engaged in the manufacture of food products and also in the tobacco business? 1075

A. As far as I am personally concerned, I guess it is natural that I am in business for myself and for the most profit and it does not matter to me who puts out the product.

Q. 17. Do you sell Piedmont matches?

A. No, but we did some years ago.

Q. 18. At the same time that you sold those Piedmont matches, were you also handling Piedmont cigarettes? 1076

A. Yes.

Mr. Hinton: This line of testimony is objected to unless the packages or labels referred to are produced and offered in evidence.

Mr. Preston: Samples of all these articles are in the possession of counsel for the P. Lorillard Company in New York and will be introduced in evidence at a later date.

Q. 19. Do you sell Ever-Ready pencils?

A. Yes.

Q. 20. Do you sell Ever-Ready razor blades? 1077

A. Yes.

Q. 21. Do you sell the Comet match?

A. No, sir.

Q. 22. Do you sell the Comet Tobacco?

A. Yes, sir, we sell the Comet Tobacco.

Q. 23. Do you sell the Pluto match?

A. Yes.

Q. 24. Do you sell Pluto Water?

A. We do.

Q. 25. The Piedmont matches and the Piedmont

1078 Cigarettes are not made by the same company, are they?

A. No, sir.

Q. 26. Nor the Ever-Ready pencil and the Ever-Ready razor blades?

A. No, sir.

Q. 27. Nor the Pluto match and the Pluto water?

A. No.

Q. 28. And you never heard of anyone who assumed that those articles were made by the same companies, did you?

A. No, sir.

1079

*Cross Examination.*

By Mr. Hinton:

X-Q. 1. How many people work at your store?

A. Just at the present time, two.

X-Q. 2. And you have seven hundred customers in here a day?

A. Yes.

X-Q. 3. How do you get that number, do you count them?

A. By the total of the cash register.

1080

X-Q. 4. You make seven hundred sales a day?

A. Yes. This is a post office station and I figure it in this way: We run about four hundred cash sales and we figure that the other three hundred would be postage stamp sales.

X-Q. 5. How much of this Beech-Nut Scrap do you buy?

A. When we buy, we buy about a gross at a time.

X-Q. 6. How often do you buy it?

A. I guess about once a month.

X-Q. 7. How many cigarettes do you buy?

A. We generally buy those by the thousand, too. 1081  
That lasts us about the same length of time.

X-Q. 8. Waiting on four hundred customers a day, I suppose, keeps you pretty busy, doesn't it?

A. Yes.

X-Q. 9. Is it your usual condition to be actively jumping from one customer to another about as fast as you can wait on them?

A. Pretty much so.

X-Q. 10. You do not try to remember any causal remarks that they may make, do you?

A. As a general rule they do not make any remarks. If they make remarks then I, being the proprietor, would note the remarks, because we try to rectify all remarks. What I mean by that is I try to keep people satisfied. 1082

X-Q. 11. That is what you are interested in, whether they are satisfied or not?

A. Sure.

X-Q. 12. You do not start conversations with them?

A. No, sir.

X-Q. 13. You are in business for profit and to supply the demand and that is where your interest begins and ends, isn't it?

A. Yes.

X-Q. 14. Do you see any similarity between the oval device on the Beech-Nut Chewing Gum and that of the Beech-Nut Cigarette? 1083

A. Now that you call my attention to it, I see that all of those are oval, and that lets it out. Then the name is similar.

X-Q. 15. There is some similarity?

A. Only in the oval shape. There is no similarity in the color of the package.

X-Q. 16. I am not talking about the package, I am talking about this brand on here.

1084 A. Only in the oval, just as I say. I noticed all three of them when you put them together.

X-Q. 17. You do not see any further similarity than that?

A. No.

X-Q. 18. Who put in these Beech-Nut Cigarettes for you?

A. The salesman for the P. Lorillard Company.

X-Q. 19. You knew they were a P. Lorillard product before you got the goods, didn't you?

A. I don't know about that. All their products are introduced by the missionary men.

1085 X-Q. 20. And the same with scrap tobacco?

A. Yes.

X-Q. 21. Can you tell me what is printed on the front of a package of Camel's Cigarettes underneath the picture of a camel?

A. On the Camel Cigarettes it has a camel and I will not be sure whether it is the R. J. Reynolds Tobacco Company or not, but I think it is.

X-Q. 22. Underneath the camel in the front, you mean?

A. Yes.

1086 X-Q. 23. What is printed on the bottom of a package of Fatima cigarettes, underneath the girl and the scimitar or half-moon?

A. I don't just remember unless it is Liggett & Myers Tobacco Company.

X-Q. 24. You just know it is made by them?

A. Yes.

X-Q. 25. What is printed on the front of this package of scrap tobacco except the name Beech-Nut?

A. We do not read that.

X-Q. 26. Did you ever notice the name of a manufacturer printed on the scrap tobacco anywhere?

A. On the front or on the back?

X-Q. 27. Front or back?

1087

A. I think so, yes.

X-Q. 28. Where is it?

A. On the bottom. On the scrap tobacco, do you mean?

X-Q. 29. Yes.

A. It is up at the top, just P. Lorillard.

X-Q. 30. On the front or back?

A. I don't know which you consider front and which you consider back.

X-Q. 31. How about the Beech-Nut Cigarettes, what is printed on them?

A. It is just Beech-Nut Cigarette and P. Lorillard on the bottom. 1088

X-Q. 32. Did anybody ever call your attention to the P. Lorillard on the bottom?

A. No, sir.

X-Q. 33. You just happened to remember that?

A. From handling it, yes.

X-Q. 34. You would not remember what is on the bottom of a Camel cigarette package or a Fatima cigarette package, or any other package, but you do remember about this?

A. I can remember that because you showed it to me.

X-Q. 35. Who showed it to you? 1089

A. You did just then.

X-Q. 36. The other day?

A. No, right now.

X-Q. 37. That is the first time you noticed it?

A. I don't memorize anything unless my attention is drawn to it.

X-Q. 38. Then you would not have noticed it unless your attention had been drawn to it, as far as you can tell?

A. Probably not.



1090 *Re-direct Examination.*

By Mr. Preston:

R-D Q. 1. I show you a package of Beech-Nut Scrap Tobacco; whose name is written across the top of the front of that package?

A. P. Lorillard, if you call that the front of the package.

R-D Q. 2. Seeing that name would mean what to you? State whether or not seeing that name would indicate to you that P. Lorillard was the maker of that tobacco?

1091 A. Yes.

R-D Q. 3. Whose name appears written on the front of the cigarette package underneath the label?

A. P. Lorillard.

R-D Q. 4. That is easily read, isn't it?

A. Yes.

R-D Q. 5. State whether or not seeing that name would indicate to you that P. Lorillard was the manufacturer of that product?

A. Sure.

R-D Q. 6. Do you think that that name P. Lorillard Company on the Cigarette Package is more conspicuous  
1092 than on any other cigarette package that you know of?

A. I believe it is.

Mr. Hinton: I object to that question as leading.

R-D Q. 7. (Exhibiting to witness package of Beech-Nut Gum): Has the sale of the Beech-Nut Chewing Gum fallen off any since the cigarette came on the market?

A. I don't know. We never did sell very much of it. We sell about a box a week and that lets us out.

R-D Q. 8. Has that been the case pretty much ever since you put the gum in?

A. Yes.

*Re-cross Examination.*

1093

By Mr. Hinton:

R-X Q. 1. What is printed on the bottom of the package of Lucky Strike Cigarettes underneath the red panel?

A. I could not tell you.

R-X Q. 2. Is it "American Tobacco Company"?

A. I know from this (indicating). It may be "American Tobacco Company, Successor."

R-X Q. 3. But it is the name of the manufacturer?

A. I don't know whether it is Patterson or what.

R-X Q. 4. Why do you say that this name P. Lorillard Company behind the glazed paper is more conspicuous than that on any other cigarette package?

1094

A. It is. I will produce those cigarettes that you mention and I will show you that P. Lorillard is more conspicuous.

R-X Q. 5. I wish you would.

(Witness produces packages of Camels, Chesterfields and Lucky Strikes.)

A. On the front of the Lucky Strike package it has no name whatever, so I don't know who it is made by. On the Camel, no name whatever. On the Chesterfield it is Liggett & Myers, and it is about, I judge, not one-eighth of an inch high, the letters. I doubt whether it is one-eighth of an inch. On the Fatima it is a little plainer.

1095

R-X Q. 6. But you could not tell without looking at the packages what any of the lettering was printed on any of those packages, could you?

A. I don't scrutinize each package. All I look for is the name "Lucky Strike" or "Camel" or "Chesterfield" or "Fatima."

1096 R-X Q. 7. I want to call your attention to what is printed on the bottom of the front of the Lucky Strike package; you will see the word "Cigarettes" there?

A. Yes.

R-X Q. 8. Is that more or less conspicuous than the words "P. Lorillard" on the Beech-Nut Cigarettes? I call your attention to what is printed on the bottom of the front of the Camel Cigarette; is that more or less conspicuous than the "P. Lorillard" to your eye?

A. To my eye, yes, it is more conspicuous because the glazed paper sort of obscures it a little.

1097 R-X Q. 9. Look at this Fatima package underneath the picture of the girl and the moon and there you will find "Turkish Blend Cigarettes, Cameron & Cameron, Richmond, Virginia," and so on. Is that inscription more or less conspicuous to your eye than the "P. Lorillard" on the bottom of the Beech-Nut Cigarette package?

A. The P. Lorillard is more conspicuous.

R-X Q. 10. Why do you say that?

A. It shows up better because there is not so much reading matter. Do you understand what I mean?

R-X Q. 11. It shows up better than this "Turkish Blend Cigarette"?

1098 A. Yes. There is so much reading matter there that your eye does catch it as quick as that.

R-X Q. 12. On the Chesterfield Cigarette package you find an inscription, "Cigarettes" at the bottom of the package and underneath that the name of the manufacturer; do you find that more or less conspicuous than the inscription on the Beech-Nut Cigarette package?

A. The "P. Lorillard" is in black letters and the other — I don't know what color it is.

R-X Q. 13. As a matter of fact, you never noticed any of these inscriptions and would not do so unless your attention had been called to them, would you?

A. No, sir.

R-X Q. 14. Therefore it does not make any difference how relatively conspicuous they are if you would not notice any of them? 1099

A. I do not know about that. No matter whether we are conscious of the fact or not, if it is conspicuous we will notice it even if we are not conscious of it. But, just as I say, if it is not conspicuous you give it the go-by.

Mr. Hinton: I am not interested in any unconscious effect the inscription may have. I think we understand each other. That is all.

*Re-direct Examination.*

1100

By Mr. Preston:

R-D Q. 1. This package of Chesterfield cigarettes is wrapped in glazed paper, is it not?

A. Yes.

R-D Q. 2. Is this package of Lucky Strike Cigarettes which I show you also wrapped in glazed paper?

A. Yes.

R-D Q. 3. You know it to be a common thing for different brands of cigarettes to be wrapped in glazed paper? 1101

A. Yes, now it is.

R-D Q. 4. Do you know why that is done?

A. To keep the cigarettes in good condition.

R-D Q. 5. Do you think that is a good thing to do?

A. Yes.

R-D Q. 6. State whether or not you think that in spite of the fact that the Beech-Nut Cigarette package is wrapped in glazed paper that the name P. Lorillard & Company written on the front of the package is easily read?

A. Yes, it is.

1102 R-D Q. 7. And that name P. Lorillard Company is more conspicuous than the name Liggett & Myers Tobacco Company on the front of the Chesterfield pack, is it not?

A. Yes, because the black letters show up better than gold.

R-D Q. 8. State whether or not the name "P. Lorillard Company" on the cigarette package is more conspicuous than the name "Cameron & Cameron" on the front of the Fatima package?

A. I believe it is.

1103 R-D Q. 9. State whether or not the name of the manufacturer appears at all on the front of the Lucky Strike package?

A. It does not.

R-D Q. 10. State whether the name of the manufacturer appears at all on the front of the Camel cigarette?

A. It does not.

(Testimony of witness concluded.)

(Signature of witness waived by consent of counsel.)

1104 J. T. WOODALL, a witness produced on behalf of the defendant, being by me first duly sworn, deposes and says as follows:

*Direct Examination.*

By Mr. Preston:

Q. 1. Please state your name, age, residence and occupation.

A. My name is J. T. Woodall; legal age; residence, over my store at 1901 Columbia Avenue; occupation, tobacco, candy and novelty merchant.

Q. 2. Will you please describe your store?

A. I have a ground floor room about twenty by twenty-five feet in an old building across from the General Electric Company's plant. I am my own clerk except that my wife helps me at times. 1105

Q. 3. In addition to tobacco, what sort of goods do you sell in your store here?

A. Candy and pie and stuff, drinks and confectionery.

Q. 4. Do you sell clocks?

A. No.

Q. 5. Do you sell Beech-Nut Scrap Tobacco?

A. Yes.

Q. 6. How long have you sold it? 1106

A. Going on six years.

Q. 7. Is that Scrap Tobacco a good seller with you?

A. Yes, it is here.

Q. 8. Do you sell Beech-Nut Cigarettes?

A. I have sold them; I haven't got any now. I am out of them just now.

Q. 9. Do you sell Beech-Nut Chewing Gum?

A. Yes.

Q. 10. Were you ever under the impression that the Company that makes the Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes also made the Beech-Nut Chewing Gum? 1107

A. No, sir.

Q. 11. Did you ever hear any comments, remarks or inquiries among your customers which indicated that they were under the impression that the same Company made the gum which made the tobacco?

A. No, sir.

Q. 12. You have a restaurant in the back of your store, haven't you?

A. No, sir.

Q. 13. Do you think the cigarette package looks like the gum package (displaying to witness Beech-Nut Cigarette package and Beech-Nut Gum package)?

1108 A. Not at all.

Q. 14. Do you think the Scrap Tobacco package looks like the Gum package?

A. No, sir.

Q. 15. What would you think of any one who, if they wanted cigarettes, would accept this gum package as a substitute?

A. He would have to be a blind man to do that.

Q. 16. I show you a package of Beech-Nut Scrap Tobacco; whose name appears on the top of the front of that package?

A. P. Lorillard.

1109 Q. 17. Would that indicate to you that Lorillard was the manufacturer of that tobacco?

A. According to all of the rest of the goods, yes, the goods that they manufacture.

Q. 18. Whose name appears on the front of that cigarette package underneath the oval design?

A. Lorillard.

Q. 19. Would that indicate that Lorillard is the manufacturer of that tobacco?

A. I should think so. I do not see why they would use that name if they did not manufacture it.

1110 Q. 20. And that name is easily seen through the glazed paper covering, is it not?

A. Yes.

Q. 21. Do you know it to be a common custom to wrap cigarette packages in glazed paper?

A. Yes.

Q. 22. Would you prefer to have a tobacco product made by an out and out tobacco manufacturer, or one made by a company which makes tobacco in addition to a large line of food products?

A. I would rather deal with a regular tobacco manufacturer who absolutely makes nothing but tobacco.

Q. 23. I show you a package of Chesterfield Cigarettes; will you state whether or not the name "Liggett

1246  
& Myers Tobacco Company" on the bottom of the front of the cigarette package is more or less conspicuous than the name "P. Lorillard Company" on the front of the Beech-Nut package. 1111

A. It is; without that paper on it one is as visible as the other.

Q. 24. I show you a package of Camel cigarettes; does the name of the manufacturer appear on the front of the Camel cigarette package?

A. No, sir.

Q. 25. Does the name of the manufacturer of the Lucky Strike Cigarette appear on the front of the package? 1112

A. No, sir.

Q. 26. Is the name "P. Lorillard Company" on the front of the Beech-Nut Cigarette Package more or less conspicuous than the name "Cameron & Cameron Company" on the front of the Fatima cigarette package?

A. Yes, it is more conspicuous.

Q. 27. Because it is larger?

A. It is not as plain as what it is there on account of the glazed paper over it.

Q. 28. The Chesterfield Cigarette package is wrapped in glazed paper, is it not?

A. Yes. 1113

Q. 29. Is the Lucky Strike Cigarette package wrapped in glazed paper?

A. Yes.

Q. 30. Has the sale of the Beech-Nut Chewing Gum decreased since the Beech-Nut Cigarette appeared on the market?

A. No, not to my knowledge.

Q. 31. Do you sell more packages of Beech-Nut Scrap Tobacco than you do packages of Beech-Nut Chewing Gum?

A. By a hundred times.



1114

*Cross Examination.*

By Mr. Hinton:

X-Q. 1. How much scrap tobacco do you sell, the Beech-Nut Scrap Tobacco?

A. I sell about six or eight dozen a week.

X-Q. 2. How many packages of Beech-Nut Cigarettes do you sell?

A. I have not sold any lately. I never sold over one or two cartons a week.

X-Q. 3. That would be from ten to twenty packages?

1115

A. Yes.

X-Q. 4. When did you first notice the name P. Lorillard on the package of cigarettes?

A. When it was first introduced.

X-Q. 5. Who makes the Sweet Caporals, do you know?

A. The American Tobacco Company.

X-Q. 6. Who makes the Camels?

A. The same people, the American Tobacco Company —no, Reynolds. Reynolds makes the Sweet Caporals, don't they? Or is it the American Tobacco Company?

X-Q. 7. Who makes the Piedmonts?

A. Liggett & Myers.

1116

*Re-direct Examination.*

By Mr. Preston:

R-D Q. 1. Do you sell Sunshine cigarettes?

A. I do, or rather I did sell them.

R-D Q. 2. Do you handle Sunshine Biscuits?

A. No, sir.

(Testimony of witness concluded.)

(Signature of witness waived by consent of counsel.)

1117

## STIPULATION.

It is stipulated by and between counsel for the respective parties that if

ALBERT F. SCHUELER were called as a witness for the defendant in this case he would testify as follows:

*On Direct Examination:*

That I am the proprietor of the tobacco store at 231 West Camden Street, Baltimore, Maryland, and I have had this store for thirty-three years. In addition to tobacco I carry toilet articles, razors, clocks, gum and candy. I have handled the Lorillard Beech-Nut Scrap tobacco since 1915 and it sells well in this neighborhood. I have handled the Beech-Nut Cigarettes since 1921. I always knew that the Lorillard Company made both of these products and I never had any customers ask me who made the Beech-Nut Cigarettes or who made the Scrap Tobacco, and I never heard any remarks or inquiries from my customers in that regard. I think any man who would accept a package of Beech-Nut Gum in place of a package of Beech-Nut Cigarettes would be crazy. I sell Velvet pencils and Velvet Tobacco; Chesterfield pipes and Chesterfield cigarettes. The Velvet pencil and the Velvet tobacco are made by separate and distinct companies and the Chesterfield cigarette and the Chesterfield pipes are made by different companies and I never heard of any one who assumed that the case was otherwise.

*On Cross Examination*

In addition to operating a store I manufacture cigars, having a small cigar factory and employing a number of

- 1120 men. I am very busy waiting on the trade and I made no effort to make a note of or remember any comments, remarks or inquiries that may have been made about the cigarettes or the scrap tobacco.

*Re-direct Examination.*

If there had been a great many of these remarks I think I would have remembered it.

STIPULATION.

- 1121 It is further stipulated by and between counsel for the respective parties that if the witness.

WILLIAM D. LILLY, were called as a witness to testify for the defendant, he would, when interrogated, testify as follows:

*Direct Examination.*

- 1122 I am forty-six years old and am the proprietor of a tobacco store at Howard and Baltimore Streets, the same being in the heart of the business district of Baltimore City. I have a thousand retail customers a day. I also am a tobacco jobber. I have been in the tobacco business for twenty-four years. I handle the Beech-Nut Scrap Tobacco. I found out that the P. Lorillard Company made this tobacco when it first came out; I learned it in the usual way that people find out those things. I have handled the Beech-Nut cigarettes since they came on the market and I was familiar with the Beech-Nut Scrap Tobacco and I assumed that they were made by the same people. When the cigarettes first came out I remember hearing a few questions from customers indicating that they thought that the same company made

## STIPULATION.

It is stipulated by and between counsel for the respective parties that if

ALBERT F. SCHUELER were called as a witness for the defendant in this case he would testify as follows:

*On Direct Examination:*

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*On Cross Examination*

In addition to operating a store I manufacture cigars, having a small cigar factory and employing a number of

- 1120 men. I am very busy waiting on the trade and I made no effort to make a note of or remember any comments, remarks or inquiries that may have been made about the cigarettes or the scrap tobacco.

*Re-direct Examination.*

If there had been a great many of these remarks I think I would have remembered it.

STIPULATION.

- 1121 It is further stipulated by and between counsel for the respective parties that if the witness.

WILLIAM D. LILLY, were called as a witness to testify for the defendant, he would, when interrogated, testify as follows:

*Direct Examination.*

- 1122 I am forty-six years old and am the proprietor of a tobacco store at Howard and Baltimore Streets, the same being in the heart of the business district of Baltimore City. I have a thousand retail customers a day. I also am a tobacco jobber. I have been in the tobacco business for twenty-four years. I handle the Beech-Nut Scrap Tobacco. I found out that the P. Lorillard Company made this tobacco when it first came out; I learned it in the usual way that people find out those things. I have handled the Beech-Nut cigarettes since they came on the market and I was familiar with the Beech-Nut Scrap Tobacco and I assumed that they were made by the same people. When the cigarettes first came out I remember hearing a few questions from customers indicating that they thought that the same company made

the cigarettes and the gum. I do not think that the gum package and the cigarette package look alike and nobody would have any difficulty in distinguishing between a package of Beech-Nut cigarettes and a package of Beech-Nut Gum, nor would anybody accept one of these in place of the other. 1123

*Cross Examination.*

It is quite natural that waiting on a thousand customers a day I have not time to have any discussion with any of the customers, nor did I make any effort to make a note of or remember what they said about the Beech-Nut Cigarettes. I merely happen to remember a few remarks that were made. 1124

*STIPULATION.*

It is further stipulated by and between counsel for the respective parties that if SOL LEVIN were called as a witness to testify on behalf of the defendant that he would, upon interrogation, testify as follows:

*Direct Examination.*

1125

I am twenty-one years of age and I am a clerk at the cigar stand at the Southern Hotel at Baltimore, which position I have occupied for three years. This Hotel is located in the heart of Baltimore City. We do not handle the Beech-Nut Scrap tobacco, but we do handle the Beech-Nut Cigarettes, though we sell not more than two cartons a month of the Beech-Nut Cigarettes, which is twenty packages a month. I do not remember having heard any comments from customers or any questions asked as to who makes the Beech-Nut cigarettes, nor anything that would indicate to me that

- 1126 those customers thought that the cigarettes were made by the same people who manufactured the gum.

*Cross Examination.*

I made no particular effort to remember any comments that may have been made about the Beech-Nut cigarettes. Our sale of these cigarettes amounts to less than twenty packages a month and that would not satisfy the ordinary demands of one cigarette smoker.

STIPULATION.

- 1127 It is stipulated by and between counsel for the respective parties that if W. FRIEDMAN were called as a witness to testify for the defendant that, upon interrogation, he would testify as follows:

*Direct Examination.*

- 1128 My name is W. Friedman and I operate a tobacco store at 632 South Broadway. I have run this store for seventeen years. I am assisted in running it by two daughters and one son. I estimate that we have a total of five hundred customers a day. We sell tobacco and candy and ties and knives, baseball gloves and so forth. I have handled the Beech-Nut Scrap tobacco since 1915 and have handled the Beech-Nut Cigarettes since they came on the market. The Beech-Nut Scrap tobacco is a good seller in this neighborhood. I knew that P. Lorillard made the scrap tobacco. I never was under the impression that the gum people made the tobacco products. The Beech-Nut Cigarette package and the package of Beech-Nut chewing gum are totally different in their appearance and no one would mistake one of these packages for the other. I do not remember having heard any comments or remarks or inquiries from cus-

the cigarettes and the gum. I do not think that the gum package and the cigarette package look alike and nobody would have any difficulty in distinguishing between a package of Beech-Nut cigarettes and a package of Beech-Nut Gum, nor would anybody accept one of these in place of the other. 1123

*Cross Examination.*

It is quite natural that waiting on a thousand customers a day I have not time to have any discussion with any of the customers, nor did I make any effort to make a note of or remember what they said about the Beech-Nut Cigarettes. I merely happen to remember a few remarks that were made. 1124

*STIPULATION.*

It is further stipulated by and between counsel for the respective parties that if SOL LEVIN were called as a witness to testify on behalf of the defendant that he would, upon interrogation, testify as follows:

*Direct Examination.*

I am twenty-one years of age and I am a clerk at the cigar stand at the Southern Hotel at Baltimore, which position I have occupied for three years. This Hotel is located in the heart of Baltimore City. We do not handle the Beech-Nut Scrap tobacco, but we do handle the Beech-Nut Cigarettes, though we sell not more than two cartons a month of the Beech-Nut Cigarettes, which is twenty packages a month. I do not remember having heard any comments from customers or any questions asked as to who makes the Beech-Nut cigarettes, nor anything that would indicate to me that 1125



- 1126 those customers thought that the cigarettes were made by the same people who manufactured the gum.

*Cross Examination.*

I made no particular effort to remember any comments that may have been made about the Beech-Nut cigarettes. Our sale of these cigarettes amounts to less than twenty packages a month and that would not satisfy the ordinary demands of one cigarette smoker.

*STIPULATION.*

- 1127 It is stipulated by and between counsel for the respective parties that if W. FRIEDMAN were called as a witness to testify for the defendant that, upon interrogation, he would testify as follows:

*Direct Examination.*

- 1128 My name is W. Friedman and I operate a tobacco store at 632 South Broadway. I have run this store for seventeen years. I am assisted in running it by two daughters and one son. I estimate that we have a total of five hundred customers a day. We sell tobacco and candy and ties and knives, baseball gloves and so forth. I have handled the Beech-Nut Scrap tobacco since 1915 and have handled the Beech-Nut Cigarettes since they came on the market. The Beech-Nut Scrap tobacco is a good seller in this neighborhood. I knew that P. Lorillard made the scrap tobacco. I never was under the impression that the gum people made the tobacco products. The Beech-Nut Cigarette package and the package of Beech-Nut chewing gum are totally different in their appearance and no one would mistake one of these packages for the other. I do not remember having heard any comments or remarks or inquiries from cus-

tomers which would lead anyone to think that the Beech-Nut Cigarettes were made by the same people that made the Beech-Nut gum. I sell Everready safety razor blades and Everready matches and these two articles are not made by the same company. 1129

*Cross Examination.*

I made no particular effort to remember any comments or remarks or inquiries made by the customers. I do not sell many Beech-Nut Cigarettes. To the best of my recollection the scrap tobacco was put in by a Lorillard Salesman and the Beech-Nut cigarettes were put in by a Lorillard salesman, so that I knew before I saw the goods who they were manufactured by. 1130

*Re-direct Examination.*

If there had been a great number of remarks indicating confusion in the minds of the customers as to who made the Beech-Nut tobacco and who made the Beech-Nut gum I believe I would have remembered it.

(Taking of depositions in Baltimore concluded.)

1132 IN THE UNITED STATES DISTRICT COURT, DISTRICT OF  
NEW JERSEY.

Beech-Nut Packing Company,	} In Equity No. 3056.
Plaintiff,	
<i>vs.</i>	
P. Lorillard Company,	} Defendant.
Defendant.	

City of Baltimore,)   
 State of Maryland.) ss.:

1133 I, Lafayette P. Temple, a Notary Public, in and for  
the City of Baltimore, State of Maryland, acting as  
Special Examiner, by consent of counsel, do hereby  
certify that the foregoing depositions of Samuel Rack-  
males, Morris J. Goodman, Carl W. Jacobson, Theodore  
Havelman, Elmer C. Kaiss, Joseph H. Nelson and J.  
T. Woodall, were taken on behalf of P. Lorillard Com-  
pany, defendant, pursuant to notice and agreement, be-  
fore me, at Baltimore, Maryland, beginning on the 11th  
day of December, 1922, and ending on the 12th day of  
December, 1922; that each of the above-named witnesses  
was by me duly sworn; that the testimony of said wit-  
nesses was taken by me, a Court Reporter, in short-  
1134 hand, and thereafter reduced to typewriting; that the  
opposing party was represented by Sebastian Hinton,  
Esq., of Counsel, during the taking of said testimony,  
and that by agreement of counsel, the signature of each  
of the witnesses was waived as indicated on the deposi-  
tions.

I am not connected by blood or marriage with either  
of the parties hereto, or interested directly or indirectly  
in the matter in controversy.

LAFAYETTE P. TEMPLE,  
Notary Public

And Examiner by Consent.

My commission expires May 5, 1924.

(Seal)

1135

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company )

vs. )

P. Lorillard Company. )

In Equity No. 3056.

December 13, 1922.

Depositions taken on behalf of P. Lorillard Company, defendant, in the above entitled action, pursuant to notice and agreement of counsel, before Edward N. Legg, a Notary Public in and for the City of Philadelphia, State of Pennsylvania, acting as Special Examiner by consent of counsel, beginning on the 13th day of December, 1922, at two o'clock p.m.

1136

Present in behalf of the plaintiff, Messrs. Offield, Poole, Hinton & Scott (by Mr. Sebastian Hinton).

Present in behalf of the defendant, Messrs. Meyers, Cavanagh & Whitehead (by Mr. Richard B. Cavanagh and Mr. Thomas L. Preston.)

1137

WILLIAM WASCHLER, a witness called on behalf of the defendant, being by me first duly sworn, deposes and says as follows:

*Direct Examination.*

By Mr. Preston:

Q. 1. Will you state your name and address?

A. My name is William Waschler; address, 827 Chesnut Street, Philadelphia, Pennsylvania. I am located in the business section of the city.

- 1138 Q. 2. What sorts of goods do you sell here?  
A. Tobacco and smokers' articles.  
Q. 3. Do you sell gum?  
A. Yes, we sell some gum.  
Q. 4. Do you know of the Lorillard Company?  
A. Yes.  
Q. 5. What is the reputation of the Lorillard Company?  
A. It is good, that is so far as I know.  
Q. 6. Do you handle a full line of Lorillard products?  
A. Yes. That is, all the stuff that sells with us.  
There are some things they make that do not sell with us,  
1139 but we carry a full line of what we need.  
Q. 7. Will you name a few of the products you sell?  
A. Cigarettes, tobaccos, Murad Cigarettes, Melachrino, Helmars, Trophies and all those.  
Q. 8. Do you sell Beech-Nut Scrap Tobacco?  
A. Yes.  
Q. 9. How long have you sold that?  
A. Since five years ago when I went in business.  
Q. 10. Is that a good seller?  
A. Yes.  
Q. 11. How much of that do you sell a week?  
A. About a gross or so.  
1140 Q. 12. How many packages are in a gross?  
A. 144.  
Q. 13. Do you sell Beech-Nut cigarettes?  
A. Yes.  
Q. 14. How long have you handled those?  
A. Since they were put on the market.  
Q. 15. Do you sell Beech-Nut gum?  
A. Yes.  
Q. 16. Do you know what company makes Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes?  
A. Yes.  
Q. 17. What company is it?

A. P. Lorillard Company.

1141

Q. 18. Were you ever under the impression that the same company that makes the Beech-Nut scrap tobacco and the Beech-Nut cigarettes also makes the Beech-Nut Chewing Gum?

A. Never.

Q. 19. Did you ever hear any comments or remarks or inquiries among your customers which indicated such a confusion on their part?

A. No.

Q. 20. Whose name appears on the front of this scrap tobacco package (Beech-Nut Scrap)?

A. Lorillard.

1142

Q. 21. Will you state whether or not that would mean to you that Lorillard was the maker of that package?

A. Surely.

Q. 22. Whose name appears on the Beech-Nut Cigarette?

A. The same, Lorillard.

Q. 23. Would that mean to you that Lorillard was the maker of that cigarette?

A. I would imagine so.

Q. 24. Do you think this cigarette package and the gum package bear any resemblance to one another?

1143

A. A trifling resemblance, yes, a slight resemblance in that egg-shaped part of it.

Q. 25. As a package, do you think the packages look alike?

A. No.

Q. 26. In regard to the label, in what respects do you consider that they look alike?

A. Just the shape and the letters in it, of course, the word "Beech-Nut."

Q. 27. You know the oval shape to be a very common device on all sorts of package goods, do you not?

1144 A. Yes.

Q. 28. What would you think of a man who, if he wanted Beech-Nut cigarettes, would allow anybody to give him a package of Beech-Nut gum?

A. I would say that he belonged in Norristown, our favorite insane asylum.

Q. 29. Do you consider chewing gum in the same class with tobacco products

A. No, they are far, far apart.

Q. 30. Is the sale of the Beech-Nut gum as good now as it was before the appearance of the Beech-Nut cigarette?

1145 A. It has not changed any on account of that.

Q. 31. You sell as much as you did before the cigarette appeared?

A. Just as much.

Q. 32. Would you prefer to handle a tobacco product put out by a straight tobacco firm, or would you prefer to have it made by a company which also manufactured food products?

A. A straight tobacco company, if possible, any time.

Q. 33. Is this Beech-Nut Scrap Tobacco the best scrap seller that you have?

A. It is.

1146

*Cross Examination.*

By Mr. Hinton:

X-Q. 1. What do you say the name of this store is?

A. Waschler & Sachs.

X-Q. 2. Is this one of a chain of stores?

A. No, sir.

X-Q. 3. Do you put out any of your own brands of cigars here?

A. No, sir.

- X-Q. 4. Or cigarettes? 1147  
A. No, sir.  
X-Q. 5. You say you see some resemblance between these packages as far as that oval label goes?  
A. Yes.  
X-Q. 6. And of course the name, Beech-Nut?  
A. Yes.  
X-Q. 7. And the lettering?  
A. Yes, that is all.  
X-Q. 8. I suppose you are pretty busy here, are you not?  
A. Generally, yes.  
X-Q. 9. You do not make a practice of talking with customers about what they think? 1148  
A. Yes, when we are not very busy we sometimes do.  
X-Q. 10. Do you discuss with your customers the question of who makes Camel cigarettes, for instance?  
A. Once in a while.  
X-Q. 11. That is a practice of yours, is it?  
A. It is once in a while.  
X-Q. 12. And your customers will talk about who makes the Camel Cigarettes?  
A. Once in a while, yes.  
X-Q. 13. You do not do that often, do you?  
A. No, sir, we do not have time. 1149  
X-Q. 14. How many times have you done that in the last year?  
A. Too many times to mention.  
X-Q. 15. How many times have you discussed with customers the question of who makes the Camel cigarettes?  
A. A great many times; I didn't count them.  
X-Q. 16. And the same with the Lucky Strike and Piedmont?  
A. Yes.  
X-Q. 17. And all the other goods that you sell?  
A. Yes.



1150 X-Q. 18. Every once in a while, when you are not busy, you do discuss those matters with your customers?

A. A customer comes in and starts talking and we will answer and we will talk about it for a while.

X-Q. 19. In the ordinary course of business, doesn't he just come in and put his money down, take his package and walk out?

A. Yes.

X-Q. 20. And if you do talk about anything it is baseball, or something of that kind, isn't it?

A. Yes, but if they ask us we answer them.

1151 X-Q. 21. You were not making any effort to remember or making a note of any questions that you may have heard about these cigarettes, were you?

A. No, I have no reason to do that.

*Re-direct Examination.*

By Mr. Preston:

R-D Q. 1. About how many customers do you have in and out of your place here in a day?

A. On an average of 1800.

1152 R-D Q. 2. If you had heard a considerable number of those remarks indicating confusion in the minds of your customers as to who made the Beech-Nut Scrap Tobacco and who made the Beech-Nut Gum, do you think you would have remembered it?

A. Yes, if I had heard a good many of them I would. I don't think I have heard anybody mention that there was any confusion in that regard at all.

*Re-cross Examination*

By Mr. Hinton:

R-X Q. 1. They all knew the difference between gum and cigarettes.

A. Yes, they all knew the difference between gum and cigarettes. They ought to. 1153

(Testimony of witness concluded.)

(Signature of witness waived by consent of counsel.)

SAMUEL B. WELSH, a witness called on behalf of the defendant, being by me first duly sworn, deposes and says as follows:

*Direct Examination*

1154

By Mr. Preston:

Q. 1. What is your name and address?

A. My name is Samuel B. Welsh; my address is 703 Chestnut Street. I am occupied in the business district of Philadelphia.

Q. 2. What lines of goods do you carry?

A. Cigars, cigarettes and tobaccos, Beech-Nut gum, candies and Beech-Nut mints and so forth and so on.

Q. 3. Do you carry anything in the nature of dry-goods or any other class of goods except confections and tobacco? 1155

A. No, sir, confections and tobacco only.

Q. 4. Do you know of the Lorillard Company?

A. Yes, very well, for a good many years.

Q. 5. Is that company known in this neighborhood as a prominent tobacco company?

A. Very much so.

Q. 6. Do you handle a full line of the Lorillard products?

A. A full line.

Q. 7. Will you name a few of them that you carry?

1156 A. Beech-Nut cigarettes, Helmar cigarettes, Murad cigarettes, Union Leader tobaccos and several others, Sensation Tobacco and others.

Q. 8. Do you know whether the Lorillard Company has advertised its products extensively in Philadelphia and in this neighborhood?

A. I do not think they have. What do you mean by that?

Q. 9. I mean in the nature of window display?

A. Oh, window display, yes, they have always had very nice window display all around. I have noticed the window displays.

1157 Q. 10. Their window display and advertisements of that sort, how do they compare with those of other tobacco companies?

A. It is very much more so than other tobaccos, their window displays. Their newspaper advertisements are not as extensive as some others, but their window displays are good.

Q. 11. Do you sell Beech-Nut scrap tobacco like this package I now show you?

A. Yes.

Q. 12. How long have you handled that?

1158 A. I guess we have handled that Beech-Nut Scrap for twenty or twenty-five years. Beech-Nut Tobacco has been on the market, I think, that long, hasn't it? It has been so commonly known that I can not remember.

Q. 13. Do you remember ever having seen a package of Beech-Nut tobacco with the picture of a squirrel on the front of it?

A. No, I don't remember ever seeing that.

Q. 14. But you have handled the tobacco put up in this sort of package for many years?

A. Yes, I think there has been a Beech-Nut Scrap Tobacco on the market — well, I can't recall how long back.

Q. 15. But as long as it has been on the market you have handled it 1159

A. Yes. Didn't it use to be made by a Cincinnati concern before you got it?

Q. 16. I could not say for certain about that. Do you sell Beech-Nut cigarettes?

A. Yes.

Q. 17. And do you sell Beech-Nut chewing gum?

A. Yes.

Q. 18. And Beech-Nut mints?

A. Yes.

Q. 19. Do you know what company makes the Beech-Nut Tobacco products? 1160

A. Yes.

Q. 20. What company is it?

A. The Lorillard Company.

Q. 21. Did you ever think that the same company that made the Beech-Nut Tobacco Products also made the Beech-Nut chewing gum and the Beech-Nut mints?

A. No.

Q. 22. How many customers do you have in and out of your store in a day?

A. On an average of four thousand customers.

Q. 23. Did you ever hear any remarks or inquiries or comments among those customers which indicated that they were in any doubt as to whether the same company made the Beech-Nut Tobacco that made the Beech-Nut gum and mints? 1161

A. Never in the world; I never heard it brought up. I have never heard that discussed.

Q. 24. Whose name appears across the front of the scrap tobacco, at the top?

A. Lorillard's.

Q. 25. Did you ever see a package of Beech-Nut Scrap Tobacco without Lorillard's name on it?

A. I don't think so, not in the latter years.

1162 Q. 26. And that would mean to you that Lorillard was the maker?

A. Yes.

Q. 27. Whose name appears on the front of the cigarette package?

A. Lorillard.

Q. 28. Is that name easily read through the glazed paper covering on that package?

A. Yes, to me it is.

Q. 29. Do you know it to be a common custom to wrap cigarette packages in glazed paper?

1163 A. Very much so. They would not sell without it now. Those that do not do it are behind the times.

Q. 30. What would you think of any one, who if he wanted a package of Beech-Nut cigarettes, would accept a package of Beech-Nut chewing gum?

A. I would not know. Nobody who ever came in my store would do that.

Q. 31. You think those two packages look alike?

A. Not a particle, not as far as the gum is concerned. It never was confusing, I don't think. I have never found it so.

Q. 32. Do you regard gum and tobacco as in the same class?

1164 A. Different classes altogether.

Q. 33. Is your sale for Beech-Nut gum as good as it was before the Beech-Nut cigarette appeared on the market?

A. Yes, and for Beech-Nut mints much heavier, you can not get it half the time.

Q. 34. Would you prefer to handle a tobacco product put out by a straight tobacco concern, or tobacco put out by a company that also manufactures various sorts of food products?

A. I would rather buy it from the straight tobacco concern.

*Cross Examination.*

1165

By Mr. Hinton:

X-Q. 1. You do a strictly retail business here; do you not?

A. Yes.

X-Q. 2. No jobbing?

A. Not so much.

X-Q. 3. But you are a jobber, though, are you not?

A. We do some wholesale business, but we put ourselves out as strictly retail.

X-Q. 4. Do you do any wholesaling of confectionery, or just tobacco? 1166

A. Confectionery and gums.

X-Q. 5. How long have you been actually engaged in handling tobacco?

A. So long ago that I almost do not remember. About forty-seven years.

X-Q. 6. How long have you run this store?

A. This store has been running about fifteen years.

X-Q. 7. What were you doing before that?

A. The same line of work. The Scarlett Company, that is the name that this store operates under, has been running about fifteen years. Then before that we called ourselves the Progressive Cigar Store. That was long before the United came on the market. It was thirty-seven years ago. Here is a certificate that is thirty-seven years old (handing paper to counsel). 1167

X-Q. 8. You mean this is your picture here?

A. Yes.

X-Q. 9. Do you wait on the retail trade yourself, or do you have help for that purpose?

A. I wait on a great deal of it.

X-Q. 10. Did you ever try to remember any comments or remarks or inquiries that you had about this question of who made the cigarettes?

1168 A. I would remember it if there had been any comment on it.

X-Q. 11. How long do you say this Beech-Nut Scrap tobacco has been on sale here?

A. I can not remember that. I don't remember just when it came in.

X-Q. 12. You said twenty or twenty-five years ago, didn't you?

A. It has not been that long. I will tell you what I was thinking of, I was thinking of that Cincinnati concern. They manufactured some scrap tobacco. I can't quite remember when the Beech-Nut came in.

1169 Q. 13. How long have Beech-Nut cigarettes been out in this District?

A. About two years now, or a year and a half.

X-Q. 14. Do you remember any customer asking you who made Camel cigarettes?

A. No.

X-Q. 15. Or who made the Fatimas?

A. No.

X-Q. 16. Or any other brand of cigarettes?

A. No.

X-Q. 17. They never discuss that question with you, do they?

1170 A. No, They do not care who makes them.

X-Q. 18. They come in and put their money down, take their package and walk out?

A. Yes.

X-Q. 19. Not being a mind reader you do not know what they think about it?

A. No, I do not believe one out of a thousand would know who made Murad cigarettes, if you ask them right offhand.

X-Q. 20. They buy it on the brand, do they?

A. They buy it on the brand, yes.

*Re-direct Examination.*

1171

By Mr. Preston:

R-D Q. 1. When you say that your customers buy a product on the brand, do you mean that they buy it on the quality of the goods?

Mr. Hinton: That is objected to as leading.

A. Yes, the quality of the goods.

R-D Q. 2. What do you think is the prime concern of a customer in regard to the products that he buys?

1172

Mr. Hinton: The question is objected to as calling for a mere opinion of the witness.

A. I don't quite understand what that question means.

R-D Q. 3. State whether or not the quality of a product is the chief consideration that the customer goes by?

A. Of course. There is no other quality of scrap tobacco on the market that the customer likes as well as he does the Beech-Nut, I don't think, not in this market.

1173

R-D Q. 4. If you had heard any considerable number of remarks or comments or inquiries in connection with the Beech-Nut Cigarette and the Beech-Nut Scrap Tobacco and the Beech-Nut gum and mints, would you have remembered them?

A. Yes, I would remember it if I heard any.

R-D Q. 5. How many customers a day do you have?

A. About four thousand.



1174

*Re-cross Examination.*

R-X Q. 1. How much of the Beech-Nut cigarettes do you sell?

A. We sell a very limited amount of Beech-Nut cigarettes just at the present time.

R-X Q. 2. How many packages a week do you sell?

A. We may sell two or three thousand cigarettes a week of the Beech-Nut brand.

R-X Q. 3. That would be fifty packages?

A. About fifty packages.

R-X Q. 4. How do they compare with the Camels?

1175 A. That I don't know. We sell more Camels.

R-X Q. 5. A great many times more?

A. Yes.

*Re-direct Examination.*

By Mr. Preston:

R-D Q. 6. How much Beech-Nut Scrap Tobacco do you sell in a week?

A. We sell in the neighborhood of three or four gross a week.

1176 R-D Q. 7. How many packages are there in a gross?

A. 144.

R-D Q. 8. Have you any other scrap tobacco that sells as well as that Beech-Nut scrap?

A. No.

R-D Q. 9. Have you any other scrap tobacco that sells half as well as that?

A. Red Man sells next to it in this location. Of course in other locations there may be other scraps that sell better, but here it is almost all Beech-Nut.

(Testimony of witness concluded.)

(Signature of witness waived by consent of counsel.)

1177

BENJAMIN NEWMAN, a witness called on behalf of the defendant, being by me first duly sworn, deposes and says as follows:

*Direct Examination.*

By Mr. Preston:

Q. 1. Will you kindly give me your name and the address of your store.

A. My name is Benjamin Newman; the address of this store is 2241 North Front Street.

Q. 2. Is this store located in what is known as the Kensington District?

1178

A. Yes.

Q. 3. Is that a good distance from the business center of Philadelphia?

A. This is one of the business centers of Philadelphia.

Q. 4. How many customers do you have in and out of your store here in a day, about?

A. We average about fifty.

Q. 5. What sorts of goods do you handle?

A. Tobacco, cigarettes, cigars, candy, matches, razor blades, pipes and so forth.

Q. 6. Do you sell toilet articles?

1179

A. A few.

Q. 7. Do you sell playing cards?

A. Yes.

Q. 8. Do you sell tobacco pouches?

A. Yes.

Q. 9. Do you know of the Lorillard Tobacco company?

A. Yes, I have known of them since I have been in business.

Q. 10. What is the reputation of the Lorillard Company?

1180 A. It is one of the finest companies to deal with that I have ever dealt with since I have been in business.

Q. 11. Do you know whether the Lorillard Company has advertised their products extensively in this community?

A. Yes, they have, especially Beech-Nut Tobacco, they have advertised that, not all their brands.

Q. 12. Do you sell Beech-Nut Scrap Tobacco like the package I show you (exhibiting package of Beech-Nut Scrap)?

A. Yes, that is one of my biggest sellers.

Q. 13. Do you sell the Beech-Nut cigarette like this?

1181 A. Yes.

Q. 14. Do you know what company makes them?

A. The Lorillard Company.

Q. 15. Do you sell Beech-Nut chewing gum?

A. No, I do not.

Q. 16. Did you ever sell it?

A. Yes, but it lay on the shelves and so I discontinued selling it.

Q. 17. How long ago did you discontinue selling it?

A. Two years ago.

Q. 18. How long before that did you put in the Beech-Nut gum?

1182 A. I had it a short time. A salesman came in and sold me a box of Beech-Nut gum and gave me a discount and I thought I would work up a little trade, but I didn't work up any trade and I discontinued selling it. It is not a good seller and I could not do anything with it at the price.

Q. 19. You have seen this gum on the market, haven't you?

A. Oh, yes.

Q. 20. How long have you carried Beech-Nut Scrap Tobacco?

A. Since it was on the market.

Q. 21. Is that a good seller?

1183

A. It is my best seller; I do not sell anything as much as I do that.

Q. 22. Have you any other scrap tobacco that sells half as well?

A. No, sir. The Red Man sells next.

Q. 23. Whose name is written on the front of the Beech-Nut Tobacco?

A. P. Lorillard Company.

Q. 24. Is that easily read?

A. Yes, it depends upon the person, though, you know.

Q. 25. I mean this: You can read that readily through the glazed paper cover, can you? 1184

A. I can see positively the P. Lorillard Company.

Q. 26. Have you ever heard in your store or anywhere else any remarks or inquiries or comments which indicated that any one was under the impression that the Beech-Nut gum was made by the same company that makes the tobacco?

A. No, I never did.

Q. 27. What would you think of a man who, if he wanted a package of Beech-Nut cigarettes, would accept a package of Beech-Nut gum in place of it?

A. Even at the present time if any one comes in and asks for Beech-Nut I always ask him whether he wants the cigarettes or the tobacco. I have to ask him what he wants, whether it is chewing gum, tobacco or cigarettes. 1185

Q. 28. But what would you think of a man who would accept the Beech-Nut gum under the impression that he was getting Beech-Nut cigarettes?

A. If a man wants cigarettes he doesn't want chewing gum.

Q. 29. Do you think it would be possible for anyone to be confused to that extent?

1186 A. No, positively not.

Q. 30. How much of this Beech-Nut Scrap tobacco do you sell in a week?

A. Twelve gross.

Q. 31. How many packages are there in a gross?

A. 144 packages.

Q. 32. Do you regard tobacco and gum as in the same class?

A. Positively not. I know as a fact that anybody who wants to stay away from tobacco that he gets chewing gum. The chewing gum helps him to lay off the tobacco. I have several customers who say that is the only way to let tobacco alone, is to chew gum. So this is a different class entirely.

1187

Q. 33. Would you rather handle a tobacco product produced by a straight tobacco company, or a tobacco product which is put out by a company that also manufactures food products of various sorts?

A. It stands to reason that people who are in the tobacco business—I would rather handle their goods because I know what they are making.

Q. 34. Do you sell Star Shaving Brushes?

A. Yes.

Q. 35. Do you sell Star tobacco?

1188

A. Yes.

Q. 36. Did you ever hear of anyone who was under the impression that those two articles were made by the same company?

Mr. Hinton: That is objected to as incompetent and irrelevant.

A. No, positively not.

Mr. Preston: It is certainly material in a case in relation to the identity of the names of two articles,

to show that it is a very common thing for various articles made by different companies to go under the same name, as this would indicate that people have not the right to assume that when the articles are in different classes, identity of name indicates identity of origin. 1189

Q. 37. Do you sell Uncle Sam Tobacco?

A. Yes.

Q. 38. Do you sell Uncle Sam pipes?

A. Yes.

Q. 40. Did you ever hear of anyone who thought that the Uncle Sam tobacco and the Uncle Sam pipes were made by the same people? 1190

Mr. Hinton: Objected to as incompetent and irrelevant.

A. No.

(Note: It is stipulated that this objection may apply to this entire line of examination without repetition. This line of examination is also objected to unless the packages or labels referred to are produced.)

Mr. Preston: Samples of all of the packages referred to are in the possession of the Lorillard counsel at New York and will be introduced in evidence at a later date. 1191

Q. 41. Do you sell Steamboat playing cards?

A. Yes.

Q. 42. Do you sell Steamboat matches?

A. Yes.

Q. 43. Did you ever hear of any one who thought that both of those articles were made by the same company?

A. No, never.

- 1192 Q. 44. Do you sell Gem matches?  
A. Yes.  
Q. 45. Do you sell Gem razor blades?  
A. Yes.  
Q. 46. Did you ever hear of any one who thought that the Gem matches and the Gem razor blades were made by the same people?  
A. No, sir, I never did.

*Cross Examination.*

By Mr. Hinton:

- 1193 X-Q. 1. Do you do a jobbing business here, Mr. Newman?  
A. Jobbing and retail both.  
X-Q. 2. What proportion of your business is jobbing?  
A. The jobbing is bigger than the retail.  
X-Q. 3. Do you put out your own brands of cigars?  
A. Yes.  
X-Q. 4. What brands of cigars do you put out?  
A. "Newman's Best," "Newman's Havana Smoker" and "Newman's Special."  
X-Q. 5. Do you make those three brands yourself, or do you have them made?  
1194 A. I do not make them myself. I have them manufactured. I do not find time to make them, so a man makes them up for me.  
X-Q. 6. And that is a common practice in the tobacco game, isn't it?  
A. Yes.  
X-Q. 7. It is a common practice to have tobacco products made up and sold under private brands?  
A. Yes, exactly.  
X-Q. 8. Are you here in the store by yourself most of the time?  
A. Yes, with the exception of Monday and then I go out.

X-Q. 9. You made no effort to remember whether customers ever asked you about these Beech-Nut cigarettes, or who they were made by, did you? 1195

A. A customer never asks who makes them.

X-Q. 10. Not so far as you can remember?

A. They have never asked me. The average customer just buys without asking. Just stop anybody on the street, anybody you choose, and ask him who makes Beech-Nut tobacco and I am sure—

Mr. Hinton: I object to that as not responsive to the question.

The Witness: (Continuing) If he asks for something and I give him something else he would not accept it. He goes by the Beech-Nut because he knows Beech-Nut is good, and I am sure that if the Beech-Nut changed its package then I would have to keep explaining what it is. That is what I have found in my eleven years of business. He just goes by the looks of it. 1196

X-Q. 11. In other words they buy on the brand and by the make?

A. Yes.

X-Q. 12. And if they have a high opinion of other products under the same name they are apt to buy a new one. 1197

A. They have got to try it out first. It is a question of quality.

*Re-direct Examination.*

By Mr. Preston:

R-D Q. 1. Is it not a fact that the thing which induces a customer to buy a product is the quality of that product?



- 1198 A. Positively the quality.  
R-D Q. 2. In your opinion, does a man buy the goods because he likes the name?  
A. No, sir, not by the name, always the quality.  
R-D Q. 3. Do you job anything except tobacco products?  
A. Whatever you see here I job.  
R-D Q. 4. Confections also?  
A. Yes, confections, matches and so forth. The retail business I am just trying to build up and most of my business is jobbing.  
R-D Q. 5. If you heard a considerable number of remarks or comments in regard to who made the Beech-Nut tobacco and who made the Beech-Nut gum and whether they were made by the same Company, do you think you would have remembered them?  
1199 A. I would remember it positively. I knew who makes the Beech-Nut gum and who makes the Beech-Nut tobacco.

(Testimony of witness concluded.)

(Signature of witness waived by consent of counsel.)

- 1200 HARRY S. SYLK, a witness produced on behalf of the defendant, being by me first duly sworn, deposes and says as follows:

*Direct Examination.*

By Mr. Preston:

Q. 1. What is your name and what is the address of your store here?

A. My name is Harry S. Sylk; the address of this store is 3362 Kensington Avenue, Philadelphia.

Q. 2. This is located in what is known as the Kensington business district, is it not? 1201

A. Yes.

Q. 3. How many customers do you have here a day?

A. Six or seven hundred, on an average.

Q. 4. What sorts of articles do you sell?

A. Cigars, tobacco, cigarettes, toilet articles, stationery and patent medicines.

Q. 5. Do you sell thermos bottles?

A. Yes.

Q. 6. And do you sell candy and perfumery?

A. Candy and perfumery and clocks and novelties.

Q. 7. Games? 1202

A. Yes, and pipes and all that stuff. I sell perfumes of all kinds.

Q. 8. Do you handle Beech-Nut Scrap Tobacco like the Beech-Nut package I now show you?

A. Yes.

Q. 9. How long have you handled it?

A. In this store here I have handled it for the past two years.

Q. 10. Were you in a similar business prior to that?

A. I have always been in the tobacco business.

Q. 11. And you sold this before you came here?

A. Yes. 1203

Q. 12. How long have you been handling it altogether?

A. For the past six or seven years.

Q. 13. Do you know what company makes it?

A. P. Lorillard Company.

Q. 14. Is it a good seller?

A. Yes, the best we have in the chewing tobacco line.

Q. 15. Have you any other scrap tobacco that is half as good a seller as the Beech-Nut Scrap?

A. In this section we have the Red Man Tobacco.

Q. 16. Is that half as good a seller as the Beech-Nut?

A. Just about half as much.

- 1204 Q. 17. Do you sell Beech-Nut cigarettes such as those in this package I now show you?  
A. Yes.
- Q. 18. Do you know what company makes that?  
A. Lorillard.
- Q. 19. Whose name is written on that package just beneath the label?  
A. P. Lorillard.
- Q. 20. Can you read that easily beneath the glazed paper?  
A. Yes.
- 1205 Q. 21. Do you know whether or not it is the common custom to wrap cigarette packages in glazed paper?  
A. Sure, I know it is.
- Q. 22. Do you sell Beech-Nut chewing gum also?  
A. Yes.
- Q. 23. Do you know what company makes that?  
A. The Beech-Nut Packing Company.
- Q. 24. Were you ever under the impression that the same Company that made the Beech-Nut Scrap Tobacco and the Beech-Nut cigarettes also made the Beech-Nut gum?  
A. No.
- 1206 Q. 25. Did you ever hear any comments or inquiries or remarks among your customers which indicated to you that they were under the impression that the tobacco products were made by the same company that makes the chewing gum?  
A. No.
- Q. 26. Do you regard tobacco in the same class with gum or in a different class?  
A. In a different class.
- Q. 27. What would you think of any one who would accept Beech-Nut gum thinking it was a package of Beech-Nut cigarettes? In other words, what would you

think of any one who would allow a storekeeper to substitute a gum package for a cigarette package? 1207

A. I would think they were crazy, or something like that.

Q. 28. Whose name is written on the front of the Beech-Nut Scrap Tobacco?

A. Lorillard.

Q. 29. And that would mean to any one who saw it that Lorillard was the maker, would it not?

A. Sure.

Q. 30. Has the sale of your Beech-Nut Chewing Gum decreased since the appearance of the Beech-Nut cigarette on the market? 1208

A. No, I don't think so.

Q. 31. Will you state whether or not it is about the same, or whether it has increased?

A. It is about the same.

Q. 32. Would you rather handle a tobacco product put out by a straight tobacco company or a tobacco product put out by a tobacco company that also made various sorts of food articles?

A. I would rather have the tobacco made by a tobacco company altogether.

Q. 33. Do you sell Blue Ribbon Cigars?

A. Yes. 1209

Q. 34. Do you sell Blue Ribbon Playing Cards?

A. Yes.

Q. 35. Did you ever hear of any one who thought that the Blue Ribbon Playing Cards were made by the same people who make the Blue Ribbon Cigars?

Mr. Hinton: This line of examination is objected to as incompetent, irrelevant and immaterial and it is further objected to unless the labels and packages referred to are introduced.

It is stipulated that this objection will be allowed

1210 to apply to this entire line of examination without repetition.

A. No.

Mr. Preston: Samples of all these articles are in the possession of the Lorillard's counsel in New York and will be introduced in evidence in the case at a later date.

Samples of the Blue Ribbon Playing Cards and of the Blue Ribbon Cigars are now produced for purposes of inspection or cross examination by opposing counsel.

1211

Q. 36. Do you sell Chesterfield pipes?

A. Yes.

Q. 37. Do you sell Chesterfield cigarettes?

A. Yes.

Q. 38. Do you sell Uncle Sam Playing Cards?

A. Yes.

Q. 39. Do you sell Uncle Sam Tobacco?

A. Yes.

Q. 40. Did you ever hear of any one who thought that the playing cards were made by the same people who make the tobacco?

1212

A. Not at all.

Q. 41. Do you sell Apple Chewing Gum?

A. Yes.

Q. 42. Do you sell Apple Tobacco?

A. Yes.

Q. 43. What is the nature of the device on the Apple Tobacco, the label?

A. The shape of an apple.

Q. 44. And what is the color?

A. Red in color.

Q. 45. What is the picture on the front of the Apple gum package?

A. An apple, that is also red.

1213

Q. 46. Do you sell Star Tobacco?

A. Yes.

Q. 47. Do you sell Star shaving brushes?

A. Yes.

Q. 48. Do you sell Velvet pencils?

A. Yes.

Q. 49. Do you sell Velvet Tobacco?

A. Yes.

Q. 50. Did you ever hear of any one who thought that the Velvet pencil and the Velvet Tobacco were made by the same firm?

A. No, sir, not at all.

1214

Q. 51. Do you regard them as in the same class of products?

A. Not at all.

*Cross Examination.*

By Mr. Hinton:

X-Q. 1. This store consists of one room about twelve feet wide?

A. Sixteen by forty-five.

X-Q. 2. And your family runs it?

A. Yes.

1215

X-Q. 3. And you live over the store?

A. Yes.

X-Q. 4. How many members of the family are usually on duty?

A. About three.

X-Q. 5. How many packages of Beech-Nut cigarettes do you suppose you sell in a week?

A. I guess about 350 or 400, or something like that.

X-Q. 6. Do you mean cigarettes or packages?

A. Packages.

- 1216 X-Q. 7. You sell 300 packages of Beech-Nut cigarettes a week?  
A. Something like that, yes.  
X-Q. 8. How many packages of Camel cigarettes do you sell a week?  
A. About four thousand or five thousand.  
X-Q. 9. That many packages a week?  
A. Yes, about four cases, a thousand in a case. There are ten packages in a carton and fifty packages in a case. I guess it would be about two thousand a week or more cases.  
X-Q. 10. Do you sell as many as 350 packages of the Beech-Nut a week, are you sure about that?  
1217 A. No, it would not be that much. About 3,000 a week would be right.  
X-Q. 11. It would run about 150, wouldn't it?  
A. Yes, I figured double.  
X-Q. 12. How much of that Beech-Nut Scrap Tobacco do you sell?  
A. About 2½ gross a week.  
X-Q. 13. And you wait on 700 customers a day?  
A. About seven hundred, sometimes it runs more.  
X-Q. 14. How do you know it is seven hundred, do you ever count them?  
1218 A. We have our cash register count.  
X-Q. 15. The register count would show seven hundred?  
X-Q. 16. What did your register count show yesterday?  
A. (After examining register slip): 575.  
X-Q. 17. Do you do any jobbing business here at all?  
A. A little, very little.  
X-Q. 18. What do you job, tobacco?  
A. Tobacco mostly; mostly cigars.  
X-Q. 19. When the Beech-Nut cigarettes were put in here I suppose they were put in by some Lorillard man, were they not, or don't you remember?

A. I guess I ordered them through a jobber first. 1219

X-Q. 20. But you knew in advance, before you saw the goods, that they were a Lorillard product?

A. Yes.

X-Q. 21. And you have been handling the scrap tobacco how long?

A. For the past two years abo it; since we had the store.

X-Q. 22. How long have you been selling tobacco?

A. Five or six years.

X-Q. 23. Where did you work before you came here?

A. The retail stores.

X-Q. 24. In Philadelphia?

1220

A. Yes.

*Re-direct Examination.*

By Mr. Preston:

R-D Q. 1. Do you do any confectionery jobbing at all?

A. Only chewing gum, that is all; a little bit of candy.

R-D Q. 2. What day of the week was yesterday?

A. Tuesday.

R-D Q. 3. On Saturday do you do a great deal more business than on Tuesday? 1221

A. Four times as much.

R-D Q. 4. The average number of customers in this store, then, you estimate as seven hundred and fifty?

A. At an average, yes. On Saturday we will run maybe about 1100 or 1200, but during the week we may run 500 or 600.

(Testimony of witness concluded.)

(Signature of witness waived by consent of counsel.)



1222

DAVID ORNSTERN, a witness produced on behalf of the defendant, being by me first duly sworn, deposes and says as follows:

*Direct Examination.*

By Mr. Preston:

Q. 1. What is your name and what is the address of your store.

A. My name is David Ornstern; the address of the store is 2462 Kensington Avenue.

1223

Q. 2. And this store is located in the Kensington business district of Philadelphia, is it not?

A. Yes.

Q. 3. What sorts of articles do you sell in your store?

A. Articles such as tobacco, smoking articles.

Q. 4. Do you sell razor blades?

A. Yes.

Q. 5. Chewing gum?

A. Yes, Chiclets, cough drops and so forth.

Q. 6. Do you know of the Lorillard Company?

A. Yes, I have been dealing with them for some time.

1224

Q. 7. Has the Lorillard Company advertised its products extensively in this neighborhood, do you know?

A. Ever since I remember they have been advertising, yes.

Q. 8. Do you handle Beech-Nut Scrap Tobacco?

A. I do.

Q. 9. How long have you handled that?

A. For about nine years, if I remember right.

Q. 10. What company makes that Beech-Nut Scrap Tobacco?

A. P. Lorillard Company.

Q. 11. Whose name appears on the front of the Beech-Nut Scrap Tobacco at the top?

A. P. Lorillard, Beech-Nut Tobacco.

1225

Q. 12. How much of that Beech-Nut Scrap Tobacco do you sell in a week?

A. I average two gross now, but I used to average much more than that.

Q. 13. How many packages would two gross be?

A. 288 packages.

Q. 14. Do you sell any other scrap tobacco that sells as well as the Beech-Nut scrap tobacco?

A. No, sir, Beech-Nut is my best seller.

Q. 15. Have you another scrap tobacco that sells half as well as the Beech-Nut Scrap Tobacco?

A. No, I can not say that I have. This is my best seller. 1226

Q. 16. Do you sell Beech-Nut cigarettes such as those in the packages I show you?

A. Yes.

Q. 17. Do you know what company makes those?

A. P. Lorillard.

Q. 18. Whose name is written on the front of that package just beneath the name?

A. Lorillard Company.

Q. 19. And that can be easily read through the glazed paper covering?

A. Yes.

1227

Q. 20. Do you know it to be a common custom to wrap cigarette packages in glazed paper?

A. They are all wrapped that way that I know of.

Q. 21. Do you handle Beech-Nut Chewing Gum?

A. No, sir.

Q. 22. Have you seen Beech-Nut Chewing Gum on the market?

A. I have heard once in a while about it, but I never did handle it.

Q. 23. Have you ever bought any Beech-Nut products in any other stores, such as Beech-Nut mints?

1228 A. No, I have not.

Q. 24. In going about in Philadelphia, have you seen advertisements of any of those articles, Beech-Nut gum or Beech-Nut mints?

A. I have seen Beech-Nut Tobacco and I have often seen that advertised.

Q. 25. But I am speaking of Beech-Nut Food Products, not the tobacco.

1229 A. To tell you the truth I don't go out much and I don't see really much of it, but I have heard of Beech-Nut Chewing Gum, naturally. There was a fellow in one day trying to sell me that gum and I told him I don't get any calls for it, I only get a call for Spearmint gum, and as I haven't much room I handle only the Spearmint gum.

Q. 26. Were you ever under the impression that the Beech-Nut chewing gum was made by the same company that made the Beech-Nut Tobacco?

A. No, I knew it was not made by the same company.

Q. 27. Do you regard chewing gum and tobacco as the same class of goods?

A. No, I do not; it is an entirely different line. How can you compare tobacco and chewing gum?

1230 Q. 28. What would you think of a man who would allow any one to substitute a gum package for a cigarette package?

A. It would be a mighty poor substitute, that is all I can say.

Q. 29. Do you think that the cigarette package and the gum package look anything alike?

A. No, sir.

Q. 30. Would you prefer to handle a tobacco product put out by a straight tobacco company, or a tobacco product put out by a company that also makes various food articles and also tobacco?

A. Naturally I would rather handle tobacco that is made by people with experience in tobacco only. 1231

Q. 31. About how many customers do you have in your store here a day?

A. I average about four hundred and fifty daily, four hundred or four hundred and fifty sales.

*Cross Examination.*

By Mr. Hinton:

X-Q. 1. I suppose you are in business to sell things to the public?

1232

A. Yes.

X-Q. 2. If you could sell an article to the public you would not care who it was made by provided there was a demand for it, is that right?

A. Naturally, yes.

X-Q. 3. Who does make the Beech-Nut gum?

A. I don't know who makes it, to tell you the truth. I have never handled it and I never went into the question of finding out who makes it and I never have had an idea who makes it. I knew it was not made by P. Lorillard.

X-Q. 4. Of course you have dealt with the Lorillard Company for a great many years?

1233

A. Yes, but I did not go into any details to find out who made the Beech-Nut gum. As you say, that is all I handle, just what is in those three jars there, and what I have in there is just Chiclets and Spearmint, and cough drops and they are all put in recently.

X-Q. 5. How many Beech-Nut cigarette packages do you sell a week?

A. I sell quite a few Beech-Nut cigarettes. I just took a lot out of the window. I judge I go as high as ten thousand a week of Beech-Nut cigarettes.

1234 X-Q. 6. That would be how many packages?

A. That would be fifty cartons or five hundred packages.

*Re-direct Examination.*

By Mr. Cavanagh:

R-D Q. 1. You said, I believe, that you regard tobacco and gum as in different classes?

A. Yes, naturally I do.

1235 R-D Q. 2. Will you state whether or not you would conclude that the Beech-Nut gum was made by a company that you know to be in the Tobacco business?

Mr. Hinton: The question is objected to as calling for an opinion and a conclusion and speculation on the part of the witness.

A. Naturally I would expect it to be made by a company that is in that line of business.

*Re-cross Examination.*

By Mr. Hinton:

1236 R-X Q. 1. Can you name any other products that are made by the same people that make Beech-Nut Gum?

A. No, sir, I am not familiar with that.

(Testimony of witness concluded.)

(Signature of witness waived by consent of counsel.).

(The taking of testimony was then adjourned until tomorrow morning at 9:30 o'clock.)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company

vs.

P. Lorillard Company.

In Equity 3056.

December 14, 1922.

The taking of testimony in the above entitled cause was then adjourned to this 14th day of December, 1922, at 9:30 a. m., at which time I attended, and, in the presence of counsel for the respective parties, proceeded to take the following depositions, that is to say:

1238

EDWARD G. HOCH, a witness called on behalf of the defendant, being by me first duly sworn, deposes and says, as follows:

*Direct Examination.*

By Mr. Cavanagh:

1239

Q. 1. Please state your name, residence and occupation

A. My name is Edward G. Hoch; I am of lawful age; I reside at 1311 Russell Street, and my occupation is that of manager of the cigar department of the Manufacturers' Club.

Q. 2. How long have you been in the Manufacturers Club cigar department here?

A. About twelve years.

Q. 3. Do you know of the Lorillard Company, the tobacco manufacturers?

A. Yes.

1240 Q. 4. I show you a package of Beech-Nut cigarettes in this case; do you sell these cigarettes?

A. Not any more, we used to sell them..

Q. 5. I also show you a package of scrap tobacco; do you sell any of this?

A. No, no scrap tobacco or plug tobacco at all.

Q. 6. I show you a package of Beech-Nut Chewing Gum; do you sell this?

A. Yes.

Q. 7. How long is it since you sold Beech-Nut cigarettes here?

A. I could not say that. When they first came out  
1241 we put them in.

Q. 8. From whom did you purchase those cigarettes, do you know?

A. T. H. Hart & Company.

Q. 9. Those people are jobbers, are they not?

A. Yes.

Q. 10. Do you know who makes the Beech-Nut cigarette?

A. P. Lorillard.

Q. 11. Were you ever under the impression that the Beech-Nut cigarette was made by the same people who make the Beech-Nut gum?

1242 A. No.

Q. 12. Did you ever hear of any comments or inquiries from customers or patrons of yours which would lead you to believe that they thought that the gum and the cigarettes were made by the same people?

A. None whatever.

Q. 13. You never had that in your experience?

A. No, sir.

Q. 14. Would you have any difficulty in distinguishing a package of cigarettes from a package of gum like these Beech-Nut Cigarettes?

A. No, you would not have any difficulty because they are both different. 1243

Q. 15. The package of cigarettes, from your experience, has a individuality of appearance all its own, has it not?

A. Yes.

Q. 16. Does the same remark apply to the gum?

A. Yes.

Q. 17. Approximately how many people do you serve at your cigar counter here a day?

A. About two hundred and fifty.

Q. 18. This manufacturers Club is one of the largest clubs in Philadelphia, is it not? 1244

A. Yes.

Q. 19. Approximately how many members are there?

A. About 3,800.

Q. 20. And it is located in the heart of the business district?

A. Yes, Broad and Walnut.

Q. 21. At this counter do you sell candy as well as tobacco products?

A. Yes.

Q. 22. Do you sell any other Beech-Nut Packing Company products?

A. Just the Beech-Nut gum and Beech-Nut mints. 1245

Q. 23. Would you have any difficulty in distinguishing in appearance between a package of scrap tobacco and this package of gum?

A. There is the same difference that there is between day and night.

Q. 24. You would not have any difficulty in distinguishing between them?

A. No, sir.



1246

*Cross Examination.*

By Mr. Hinton:

X-Q. 1. You never carried the scrap tobacco?

A. No sir.

X-Q. 2. When did you put in the cigarettes, do you know?

A. When they first came out we put in a few of them.

X-Q. 3. How many do you suppose you sold a week?

A. We did not sell very many of them because the trade for the cheap cigarette is very limited here.

1247 X-Q. 4. Your people did not like that cigarette?

A. I can not say they did or did not; they were not selling very well, however.

X-Q. 5. When you did first put in these cigarettes, do you remember how many packages you sold in a week?

A. No, that I could not say.

X-Q. 6. How many did you buy?

A. We only bought them in small quantities because we get our stock twice a week from the jobber.

X-Q. 7. What do you mean by small quantities?

A. Two or four hundred, one or two cartons at a time.

1248 X-Q. 8. When did you discontinue the Beech-Nut cigarettes?

A. About a couple of months ago.

X-Q. 9. What was the average purchase of those cigarettes during the time that you were handling them?

A. That I could not say. Just as I said before, the sale of that cigarette was very much limited and what it was I could not say.

X-Q. 10. Please try to give me an estimate; did you sell ten packages a week up to the time you quit handling them?

A. No, I did not sell that many.

X-Q. 11. Did you sell five packages a week? 1249

A. I guess about five at that time, yes.

X-Q. 12. And when they first came out, how many were you selling, more than that or less than that?

A. They were going fair when they first came out.

X-Q. 13. But your trade here stopped buying them presumably because they did not like them?

Mr. Cavanagh: That is objected to as calling for a conclusion and as attempting to elicit an answer for which there has been no foundation laid.

A. Yes, they got tired of them, I guess. I could not tell that from the smokers' standpoint. You see here at this place we do not push any individual brand, we give them just what they ask for. We do not specialize in anything, we sell just what the people demand. 1250

X-Q. 14. Was there a demand for those cigarettes when they first came out?

A. Yes.

X-Q. 15. And the people did buy them for a while?

A. Yes.

X-Q. 16. And then they stopped buying them?

A. Yes, then they stopped buying.

X-Q. 17. And then you discontinued selling them? 1251

A. Yes.

X-Q. 18. You could not tell me how much they bought at the beginning?

A. No, because I did not keep a record of that.

X-Q. 19. You do not remember any customer having made any remarks at all about those cigarettes?

A. None whatever.

X-Q. 20. Do you remember any customer having said anything about the quality of those cigarettes?

A. None whatever.

1252 X-Q. 21. As a matter of fact, the customers in this club do not talk to you about that sort of thing, do they?

A. No, because I don't bother about that.

X-Q. 22. They walk up and put down their money and get what they have purchased and walk away again?

A. Yes.

X-Q. 23. And you do not make any effort to discuss the quality of the goods, or the manufacturer, or anything else with the customer, do you?

A. No.

X-Q. 24. You wait on them and you are busy doing that?

1253 A. Yes.

*Re-direct Examination.*

By Mr. Cavanagh:

R-D Q. 1. Most of the cigarettes you sell here are highgrade cigarettes?

A. Yes.

R-D Q. 2. Pallmalls and Egyptian Deities and such cigarettes?

A. Yes, and Murads and Turkish cigarettes.

1254 R-D Q. 3. Do you sell the Pallmall Candy here?

A. No.

R-D Q. 4. But you do sell the Pallmall cigarettes?

A. Yes.

R-D Q. 5. If you had any number of inquiries as to whether the people who made the cigarettes were the same people who manufactured the gum, would you recall such instances?

A. Yes, I would recall it. There were none.

*Re-cross Examination.*

1255

By Mr. Hinton:

R-X Q. 1. Would you consider Beech-Nut cigarettes quality cigarettes like the Pallmall, or not?

A. I have never smoked a Beech-Nut cigarette, so therefore I do not know.

R-X Q. 2. You do not know anything about their quality?

A. I can tell the quality if I smoke them, but I have never smoked a Beech-Nut cigarette.

R-X Q. 3. You do not know how it compares with a Pallmall cigarette or Egyptian Deity or any other brand of cigarettes?

1256

A. That is a foolish question to ask because there is as much difference between that tobacco and the Pallmall cigarette as there is between day and night.

R-X Q. 4. What is the difference?

A. One is genuine turkish and the other is domestic.

R-X Q. 5. Which would be the quality goods?

A. The Pallmall.

R-X Q. 6. As compared with the Beech-Nut?

A. Yes, Beech-Nut is cheaper quality.

R-X Q. 7. And you would not consider the Beech-Nut cigarette a so called quality cigarette, then, would you?

1257

A. I could not say that; it may be in its class.

R-Q. 8. You would not consider the class in which it is to be a quality class, would you?

A. No. It has a quality of its own, that is the way I would figure it.

R-X Q. 9. How does that quality compare with what you know as the quality kind of cigarettes?

A. Like Camel or like Lucky Strikes, that is what I would class the Beech-Nut cigarette with.

R-X Q. 10. How about the Piedmont?

1258 A. The Piedmont is a Virginia cigarette, that is a different class; that is in a class of its own.

R-X Q. 11. You would not class those two together?

A. Not Piedmont and Beech-Nut, no.

R-X Q. 12. If you turned your mind back to the period during which you were handling and selling these Beech-Nut cigarettes to the extent of approximately five packages a week, I want to ask you once again, are you perfectly sure you have never heard any customer make any remark of any kind about the cigarettes?

A. None whatever, no.

R-X Q. 13. And you cannot remember having heard  
1259 anything at all?

A. No.

*Re-direct Examination.*

By Mr. Cavanagh:

R-D Q. 1. The Pallmall cigarette is an expensive cigarette, is it not?

A. Yes.

R-I Q. 2. It retails for about twenty-five cents?

A. Yes.

1260 R-D Q. 3. And the price of the Beech-Nut is about fifteen cents, isn't it?

A. Yes.

(Testimony of witness concluded.)

(Signature of witness waived by consent of counsel.)

1261

FRED J. HAHN, a witness produced on behalf of the defendant, being by me first duly sworn, deposes and says as follows:

*Direct Examination.*

By Mr. Cavanagh:

Q. 1. Will you please tell us your name and age and occupation?

A. My name is Fred J. Hahn; I am of lawful age; my occupation is that of manager of the cigar and candy stand in the Land and Title Building, at the corner of Chestnut and Broad, Philadelphia, Pennsylvania. 1262

Q. 2. How long have you been the manager here?

A. Twelve years.

Q. 3. This stand is in one of the busiest sections of the City of Philadelphia, is it not?

A. Yes.

Q. 4. Do you sell the Beech-Nut cigarettes like the package in this case?

A. I did sell it, yes.

Q. 5. Do you sell the Beech-Nut Scrap tobacco?

A. No.

Q. 6. Do you sell any Beech-Nut chewing gum or other candy products? 1263

A. Beech-Nut mints, but I will not sell the gum.

Q. 7. Do you know who makes the Beech-Nut cigarette?

A. Yes.

Q. 8. What concern makes it?

A. Lorillard.

Q. 9. Were you ever under the impression that the Beech-Nut cigarette was made by the same people who make the Beech-Nut gum?

A. No.

1264 Q. 10. Did you ever have any of your customers ask you questions or make any comments or inquiries which would lead you to believe that they thought the gum was made by the same people who made the cigarettes?

A. No, nobody ever asked me.

Q. 11. You never knew the question to be raised?

A. No.

Q. 12. Would you have any difficulty in distinguishing a package of cigarettes or a package of scrap tobacco from a package of chewing gum?

1265 A. Do you mean would I have any difficulty in distinguishing the difference between the two? Sure I would not have any trouble; one is yellow and the other is red and striped.

Q. 13. What would be your opinion of a man who wanted a package of cigarettes or a package of scrap tobacco if he took a package of gum in the place of it?

A. I would think he was crazy to take gum for tobacco.

Q. 14. You think the scrap tobacco and the gum each has an individuality in appearance all its own, then?

A. Yes.

*Cross Examination:*

1266

By Mr. Hinton:

X-Q. 1. How many of those Beech-Nut cigarettes do you sell in a week?

A. Very few of them.

X-Q. 2. About how many packages a week?

A. The Beech-Nut cigarette does not take; I did sell some of them. They sold for a while.

X-Q. 3. What is the matter?

A. They do not sell, that is all. My trade is mostly Murad and Camels and Piedmonts and Rameses.

X-Q. 4. What do Piedmonts sell for?

A. Fifteen cents, Camels and Lucky Strikes and Fatimas and Chesterfields, these are the only cigarettes we sell. 1267

X-Q. 5. When the Beech-Nut cigarettes first came out, did you have a demand for them?

A. Yes.

X-Q. 6. What was your average sale approximately in packages per week?

A. About twenty packs a week.

X-Q. 7. And you are not selling as many as five a week now, are you?

A. No.

X-Q. 8. How long did that demand of approximately twenty packages a week keep up? 1268

A. About four or five weeks, that is all.

X-Q. 9. Then they stopped buying?

A. Yes.

X-Q. 10. Did you ever hear anybody say why he stopped buying the cigarettes?

A. They did not like them, that is all.

X-Q. 11. Did you hear any number of people make that remark, that they did not like the cigarettes?

A. The same remark, that they did not care for them. They would try them, a Camel customer would try them and then he would come back and ask for Camels again. 1269

X-Q. 12. How many times do you suppose you have heard that?

A. Only a few times. The average person will not say anything. They will just say, "Give me so and so."

X-Q. 13. They do not discuss with you what they think?

A. No.

X-Q. 14. There is no reason why they should, is there?

A. No, they just change their brand and that is all.

X-Q. 15. You are alone in looking after this stand, aren't you?



1270 A. Yes.

X-Q. 16. It keeps you pretty busy waiting on the people that come here?

A. Yes.

X-Q. 17. You do not have much time to talk?

A. No, not much. I am here all the time. I never get a dinner hour from morning until night.

X-Q. 18. You are on the job all the time?

A. Yes.

X-Q. 19. You knew, of course, before these cigarettes came in that they were a Lorillard product?

1271 A. Sure, they called on me, the Lorillard man called on me.

*Re-direct Examination:*

By Mr. Cavanagh:

R-D Q. 1 You say you do not sell the Beech-Nut gum now?

A. No.

R-D Q. 2. Why not?

1272 A. Because of the conditions, the way they raise their price against other brands, you can not sell them at that price. I stopped selling them when they made them ninety cents. I would not put it back again. They made the price ninety cents and I threw it out and I would not put it back.

R-D Q. 3. As to cigarettes, different customers have different tastes and different likes and dislikes for different brands?

A. Yes.

R-D. 4. That is all a matter of individual taste, certain brands they like and others they do not like?

A. Yes.

*Re-cross Examination:*

1273

By Mr. Hinton:

R-X Q. 1. With cigars and cigarettes, will you say it was altogether a matter of individual taste whether a man likes the goods or not, and would you say that there is no such thing as a good cigar and a bad cigar?

A. Certainly there is such a thing as a good cigar and a bad cigar, but it must suit a man's taste.

R-X Q. 2. How about cigarettes?

A. The same way.

(Testimony of witness concluded.)

1274

(Signature of witness waived by consent of counsel.)

FRANKLIN P. STERN, a witness produced on behalf of the defendant, being by me first duly sworn, deposes and says as follows:

*Direct Examination:*

By Mr. Cavanagh:

1275

Q. 1. Will you please state your name, age, residence and occupation.

A. My name is Franklin P. Stern; I am fifty-three years of age; my occupation is that of cigar dealer; my business is located at 20 North Twelfth Street, Philadelphia, Pennsylvania.

Q. 2. How long have you been in business?

A. All my life; I have been here at this store thirty-three years.

Q. 3. What goods do you sell besides tobacco?

1276 A. Chewing gum, candies, razor blades, pipes and smokers' articles.

Q. 4. Do you sell the Beech-Nut Scrap Tobacco and the Beech-Nut cigarettes?

A. Yes.

Q. 5. Do you sell the Beech-Nut Chewing Gum?

A. Yes.

Q. 6. How long have you been selling the scrap tobacco?

A. Ever since it has been on the market.

Q. 7. How does that Beech-Nut Scrap tobacco sell?

A. Very good, indeed.

1277 Q. 8. It is a good seller?

A. Yes, the best scrap seller there is.

Q. 9. Who makes the Beech-Nut scrap, do you know?

A. Lorillard Company.

Q. 10. Who puts out the Beech-Nut Cigarette?

A. Lorillard Company.

Q. 11. Did you ever have any customers make any comments or inquiries, or ask any questions which would lead you to think that they thought the Beech-Nut scrap tobacco and the Beech-Nut cigarettes were made by the same people that made the Beech-Nut chewing gum

A. Positively not.

1278 Q. 12. Were you yourself ever under the impression that the Beech-Nut tobacco or the Beech-Nut cigarettes were made by the same people who made the Beech-Nut gum?

A. No, I knew different.

Q. 13. Would you have any difficulty in distinguishing the appearance of a package of Beech-Nut scrap tobacco and a package of Beech-Nut cigarettes from a package of Beech-Nut chewing gum?

A. Absolutely none.

Q. 14. A scrap tobacco package and a cigarette package have an individuality of their own?

A. Yes, distinctly different from the gum.

Q. 15. Do you sell other articles of different classes and different kinds that have the same name? 1279

A. Yes.

Q. 16. For example, what articles?

A. Apple chewing gum and apple chewing tobacco.

Mr. Hinton: This line of testimony is objected to as immaterial and irrelevant.

Q. 17. I call your attention to a piece of Apple plug tobacco; is that the Apple tobacco to which you have referred?

A. Yes.

Q. 18. And I call your attention to a package of Apple Chewing Gum; is that the Apple gum to which you have referred.

A. Yes.

Q. 19. And you sell both of these articles in your store here, do you not?

A. Yes.

(For convenience in the taking of defendant's depositions it is stipulated that the various exhibits or articles under the same name may be introduced hereafter in evidence and identified, by a separate or general stipulation, subject to any objections which the plaintiff's counsel may wish to make to the introduction or to the materiality or admissibility of the exhibits.)

Q. 20. Do you sell Eveready matches?

A. Yes.

Q. 21. And Eveready razor blades?

A. Yes.

Q. 22. Are those made by different concerns?

A. They are.

1282 Q. 23. What is the reputation of the P. Lorillard Company in the tobacco business?

A. A No. 1.

Q. 24. It is a very large manufacturing concern, isn't it?

A. It is.

Q. 25. As a tobacco man and speaking from your experience, would you prefer to purchase a tobacco product from a tobacco manufacturing company, or from a concern which makes food products?

A. From a tobacco manufacturing company.

1283 Q. 26. Did you ever hear of the Beech-Nut Packing Company, the chewing gum people, ever putting out any tobacco products?

A. Never.

Q. 27. Did you ever hear of the P. Lorillard Company ever putting out any food products?

A. Never.

Q. 28. This store is in a busy section of the City, is it not?

A. Yes, centrally located.

Q. 29. And you have about how many customers a day here in your store?

A. Close to a thousand.

1284

*Cross Examination.*

By Mr. Hinton:

X-Q. 1. How many of those Beech-Nut cigarettes do you sell now, how many packages a week?

A. Just now we have laid them off because we have another brand that we are putting out. When we were selling the Beech-Nut cigarettes we were selling about 10,000 a week, or 500 packages.

X-Q. 2. Up until when?

A. That was up until about six weeks ago.

1285

X-Q. 3. Then, although you were selling five hundred packages a week, you discontinued the sale of them?

A. Yes, because we had them on at a special price; we were selling the 20-cent cigarette at ten cents.

X-Q. 4. Are they a 20 cent cigarette?

A. No, I am mistaken; a 15-cent cigarette; we were selling them at ten cents.

X-Q. 5. How long have you been selling them at ten cents; do you always sell them at ten?

A. No, sir.

X-Q. 6. Before you began to offer them at ten cents, how many packages were you selling a week?

1286

A. About twenty-five.

X-Q. 7. Then you began offering them at ten cents a package and sold about five hundred packages a week?

A. Yes.

X-Q. 8. Until you got rid of your stock?

A. Yes, and then we got another brand to take its place. We could not buy them then to sell at ten cents.

X-Q. 9. When those cigarettes first came out, how many packages did you sell a week, approximately?

A. About twenty-five a week. They started off and held one pace.

X-Q. 10. There was no difference; they began at twenty-five packages a week and sold right straight along about twenty-five a week?

1287

A. Yes.

X-Q. 11. And then for a while you sold five hundred packages a week?

A. At the cut prices, yes.

X-Q. 12. And then stopped?

A. Yes.

X-Q. 13. Are you quite sure that when you first put in the cigarettes you did not sell more than twenty-five packages?

1288 A. I would not say: To my estimation it was close to twenty-five a week.

X-Q. 14. No variation?

A. No variation.

X-Q. 15. What is the average purchase of a cigarette smoker?

A. Approximately a package a day, I would say.

X-Q. 16. Then twenty-five packages a week would satisfy the demands of three or four or five cigarette smokers?

A. Yes.

1289 X-Q. 17. Or else twenty-five packages a week would be sold to a great many more people who would buy one package and then never buy another package?

A. Yes, that is the idea.

X-Q. 18. Which of those explanations do you think is the most probable for the fact that you sold twenty-five packages a week only?

A. The explanation would be this, that the blend did not seem to suit the public on cigarettes and they tried them and did not buy any more.

X-Q. 19. I suppose a great many people would buy a package and try them and then not buy another package?

1290 A. Yes.

X-Q. 20. And the reason for that is, as you just said, they did not seem to like it?

A. They did not like the blend.

X-Q. 21. Then you had a good stock of these cigarettes on hand and you cut the price to get rid of them?

A. Yes.

X-Q. 22. And you got rid of 500 packages at ten cents?

A. Yes.

X-Q. 23. You said people did not seem to like the blend of those cigarettes, is that a statement made on

the basis of anything that your customers said to you 1291  
about those cigarettes?

A. No, they simply tried them and did not buy again.

X-Q. 24. They did not tell you whether they liked them or not?

A. No, they just went back to their old blends.

X-Q. 25. You did not hear any customers say anything about the cigarettes?

A. No, sir, they did not.

X-Q. 26. They never said anything of any kind except to ask for the cigarettes and then not buy them any more?

1292

A. That is right.

X-Q. 27. How long have you been selling that Apple chewing gum and the Apple chewing tobacco?

A. The Apple chewing gum has been on the market about four months and the chewing tobacco has been on the market about ten or twelve years.

X-Q. 28. Is the Apple chewing tobacco a good seller?

A. Very.

X-Q. 29. How many clerks do you employ here?

A. Three besides myself.

X-Q. 30. I do not suppose you can tell exactly, but how many packages of those Beech-Nut cigarettes would the average purchaser buy before he quit using them? 1293

A. I couldn't give you an idea of that, That would be very hard to tell. The average smoker usually tells on one package of cigarettes whether it suits his taste or not. That is the average man.

X-Q. 31. Then in so far as the purchasers who would buy those Beech-Nut cigarettes and then fail to repeat, your twenty-five sales a week would represent about twenty-five people a week who bought a package a week?

A. Experimenting on the cigarettes.



1294 X-Q. 32. And they quit because they did not like it?

A. Yes.

*Re-direct Examination.*

By Mr. Cavanagh:

R-D Q. 1. At the time you reduced the price of the Beech-Nut Cigarettes there was a price cut war on in Philadelphia, was there not?

A. Yes.

R-D Q. 2. And the prices were being cut on all domestic cigarettes, practically?

1295

A. Yes.

R-D Q. 3. And throughout the whole city of Philadelphia it was well known that there was a price-cut war on?

A. Yes.

R-D Q. 3. And a tobacco store had to cut the prices to sell any goods?

A. To sell any goods, otherwise they were not salable.

R-D Q. 4. And the price was cut on the various standard brands?

A. Yes, nothing sold at normal prices.

1296 R-D Q. 5. Everything was cut?

A. Everything was cut. There is a little thing that I would like to explain in addition to that that may bear on this question. In our stock of cigarettes, if we do not turn it over once a week, we consider it a dead brand and our main object, then is to sell them quickly. Having fresh cigarettes is what makes them salable.

R-D Q. 6 You mean by that that cigarettes must not be dried out?

A. Yes, they must not be dried out, the goods must be fresh to be sold. . This is especially true of cigarettes. Cigarettes must turn over once a week with us.

R-D Q. 7. Different customers have different tastes in that regard? 1297

A. Absolutely.

R-D Q. 8. You find that in the scrap tobacco the same rule applies?

A. Yes.

R-D Q. 9. The Beech-Nut Scrap tobacco is a great seller with you, is it not?

A. The best we have.

R-D Q. 10. Lots of your customers like that scrap tobacco?

A. Yes.

R-D Q. 11. And they might not take the same liking to other brands of scrap? 1298

A. That is correct.

*Re-cross Examination.*

By Mr. Hinton:

R-X Q. 1. As a matter of fact, in order to put an end to the discussion, you did cut the price more on your Beech-Nut cigarettes than you did on the other cigarettes?

A. Yes, because we consider that a dead brand.

R-X Q. 2. You wanted to get rid of it?

1299

A. We wanted to clean it up.

R-Q Q. 3. And you did not want to deal in it any more?

A. Not unless they came back.

R-X Q. 4. Because your customers, having tried them, did not like them?

A. They did not like the cigarettes.

1300 *Re-direct Examination.*

By Mr. Cavanagh:

R-D Q. 1. And it may have been a question of their own taste?

A. Certainly. The blend did not seem to suit.

R-D Q. 2. One may like one blend and another man may like another blend?

A. Yes.

(Testimony of witness concluded.)

1301 (Signature of witness waived by consent of counsel.)

LOUIS GRAY, a witness produced on behalf of the defendant, being by me first duly sworn, deposes and says as follows:

*Direct Examination.*

By Mr. Preston:

1302 Q. 1. Please state your name, age, residence and occupation.

A. My name is Louis Gray; my store here is No. 52 North 13th Street; the store is located in the business section of the City of Philadelphia.

Q. 2. What sort of goods do you handle?

A. Just what you see here, all kinds, tobacco, razor blades, toilet articles, gum, and a little candy.

Q. 3. Do you sell playing cards and perfumery?

A. Yes.

Q. 4. How many customers a day do you have approximately?

A. About four hundred and fifty.

Q. 5. Do you know of the P. Lorillard Company? 1303

A. Yes.

Q. 6. Do you handle Beech-Nut Scrap Tobacco like this package I now show you?

A. Yes.

Q. 7. Do you know what company makes that?

A. Yes.

Q. 8. What company makes it?

A. Lorillard Company.

Q. 9. Do you sell the Beech-Nut cigarette?

A. Yes.

Q. 10. Do you know what company makes the Beech-Nut cigarette? 1304

A. Yes.

Q. 11. What company is it?

A. Lorillard.

Q. 12. Do you sell Beech-Nut chewing gum here?

A. No sir.

Q. 13. Did you ever handle the Beech-Nut gum?

A. I did, but not here, not in this store. I had another store where I used to handle it.

Q. 14. How long ago was it that you used to handle it?

A. About a year ago.

Q. 15. Do you know what company makes the Beech-Nut chewing gum? 1305

A. The Beech-Nut Company, Beech-Nut Mint Company that makes the Beech-Nut mints.

Q. 16. Were you ever under the impression that the same company made the tobacco that made the mints and the gum?

A. No.

Q. 17. Either in this store or in the store where you worked before, did you ever hear any customers make any remarks which indicated that they were under the impression that the same company that made the gum also made the cigarettes?

1  
3  
1  
0

1306 A. No, not in the stores where I was.

Q. 18. A cigarette package has an individuality of its own as far as its appearance goes, has it not?

A. Yes.

Q. 19. And does the same thing apply to the Beech-Nut Scrap tobacco?

A. Yes.

Q. 20. And the appearance of the cigarette package is entirely different from the appearance of the gum package, is it not?

A. Yes.

Q. 21. What would you think of any one who would  
1307 mistake a package of Beech-Nut chewing gum for a package of Beech-Nut cigarettes?

A. In what way? I don't understand you.

Q. 22. What would you think of a man who would accept Beech-Nut gum under the impression that he was getting a package of Beech-Nut cigarettes, would that be possible?

A. If he would come in and ask for Beech-Nut, do you mean?

Q. 23. Would it be possible for any one to take Beech-Nut gum in place of Beech-Nut cigarettes, if he wanted the cigarettes?

1308 A. No.

Q. 24. Is the Beech-Nut Scrap tobacco a good seller?

A. Yes.

Q. 25. Have you any scrap tobacco that is as good seller as the Beech-Nut scrap?

A. Not here I have not.

Q. 26. How much of the Beech-Nut scrap tobacco do you sell in a week?

A. About eight dozen.

Q. 27. Did you ever hear of a tobacco company making food products?

A. No, I never did.

Q. 28. Did you ever hear of a food products company making tobacco? 1309

A. No.

Q. 29. Would you prefer to handle a tobacco which was put out by a straight tobacco company, or a tobacco which was put out by a food products company that also made tobacco?

A. I think I would prefer to buy from a straight tobacco company.

Q. 30. Is your sale for Beech-Nut gum as good as it was before the Beech-Nut cigarette made its appearance on the market?

A. I do not have a call for Beech-Nut gum once in six months, and the price is so high that there is no profit in it. 1310

*Cross Examination.*

By Mr. Hinton:

X-Q. 1. How many packages of Beech-Nut cigarettes do you sell a week, approximately?

A. About a thousand Beech-Nut cigarettes a week.

X-Q. 2. That would be fifty packages?

A. Yes.

X-Q. 3. Are they selling as well now as they did in the beginning, or not so well? 1311

A. They are not selling so well on account of the other cigarettes coming down so low in price.

X-Q. 4. How many packages did you sell when they first came out, how many packages a week?

A. We sold more at that time, before the other cigarettes came out.

X-Q. 5. About how many?

A. About 3,000.

1312 X-Q. 6. In other words, you sold at least three times as much in the beginning as you do now?

A. Yes.

X-Q. 7. Wouldn't it be closer to five times?

A. Maybe a little more; I can not give you exactly the figures.

X-Q. 8. How long did you say you had been in this store?

A. Over a year.

X-Q. 9. Before that you were in another tobacco store?

A. Yes.

1313 X-Q. 10. How many years were you there?

A. About two years.

X-Q. 11. What were you doing before that?

A. In the tobacco game, but not in the retail game.

X-Q. 12. In the wholesale line?

A. Manufacturer of cigars.

X-Q. 13. Were you a manufacturer of cigars before?

A. Yes.

X-Q. 14. When you were a cigar manufacturer, did you make any private brands of cigars?

A. Yes.

1314 X-Q. 15. Did you make cigars which were branded with some brand that bore the name of some particular retailer?

A. No, I could not do that.

X-Q. 16. I mean did you furnish him with his brand?

A. Oh, yes.

X-Q. 17. The retailers would order their brands from you?

A. Yes.

X-Q. 18. Their own private brands?

A. Yes.

X-Q. 19. You did not make any effort to make a note or to remember any remarks or comments or inquiries

that customers may have made about the Beech-Nut 1315  
cigarettes, did you?

A. No, I did not.

X-Q. 20. Did anybody ever say anything to you  
about the Beech-Nut cigarettes, except to buy them?

A. No.

X-Q. 21. From the time you first put them in until  
the present time there have been no remarks of any  
kind made to you by anybody over the counter about  
those cigarettes?

A. Do you mean as far as the quality is concerned?

X-Q. 22. Or about anything?

A. No.

1316

*Re-direct Examination.*

By Mr. Preston:

R-D Q. 1. How long ago was it that you sold 3,000  
Beech-Nut cigarettes a week?

A. Just before the price of the other cigarettes came  
down.

R-D. Q 2. In your opinion, was the decrease in the  
sale of Beech-Nut cigarettes due to the cut in the price  
of the other brands?

A. Yes.

1317

Mr. Hinton: I object to the question as calling  
for the opinion and conclusion of the witness.

(Testimony of witness concluded.)

(Signature of witness waived by consent of  
counsel.)



1318

HARRY A. LINN, a witness produced on behalf of the defendant, being by me first duly sworn, deposes and says:

*Direct Examination.*

By Mr. Preston:

Q. 1. What is your name, residence and occupation?

A. My name is Harry A. Linn; the address of this store is 2557 Kensington Avenue, Philadelphia, Pennsylvania.

1319 Q. 2. What sorts of stuff do you sell in your store in addition to tobacco?

A. Everything, toys, novelties, magazines, clocks.

Q. 3. Do you sell playing cards?

A. Yes, playing cards, perfumery, soda and everything.

Q. 4. Do you know of the Lorillard Company?

A. Yes.

Q. 5. Do you handle the Beech-Nut Scrap Tobacco like the package I now show you?

A. Yes.

Q. 6. How long have you handled it?

1320 A. For the last ten years anyway.

Q. 7. Is that a good seller with you?

A. It is.

Q. 8. Do you know what company makes this?

A. Sure.

Q. 9. What company?

A. Lorillard.

Q. 10. Do you sell Beech-Nut cigarettes?

A. Yes.

Q. 11. Do you know what company makes them?

A. The same company.

Q. 12. How do those sell?

1321

A. Not so extra with me.

Q. 13. Is it a fair seller?

A. A fair seller.

Q. 14. Do you sell Beech-Nut chewing gum like this package I now show you?

A. Yes.

Q. 15. Were you ever under the impression that the same company that made the Beech-Nut Chewing Gum also makes the Beech-Nut tobacco and the Beech-Nut cigarette?

A. No, it never entered my mind.

Q. 16. Do you know what company makes the Beech-Nut chewing gum?

1322

A. I did not take interest enough in it to find out.

Q. 17. Did you ever hear any remarks or comments among your customers which indicated that they were under the impression that the chewing gum was made by the same company that made the tobacco?

A. No.

Q. 18. How many customers do you have in your store in a day, on an average?

A. I never took a figure on that.

Q. 19. Can you approximate how many?

A. About three or four hundred, I guess.

Q. 20. How much of this scrap tobacco do you sell in a week?

1323

A. About ten dozen or twelve dozen a week.

Q. 21. Have you any other scrap tobacco which is as good a seller as that Beech-Nut Scrap?

A. That is about my best seller, the Beech-Nut Scrap. The Omega comes next.

Q. 22. Whose name appears on the front of the cigarette package?

A. Lorillard.

1324 Q. 23. Can you read that readily from where you stand?

A. Certainly.

Q. 24. And you are about four feet from that package?

A. Yes.

Q. 25. You know it is a common custom to wrap cigarette packages in glazed paper, do you not?

A. Yes.

Q. 26. The cigarette package has an individuality of its own as far as its appearance is concerned, isn't that true?

1325 A. Yes.

Q. 27. And the same thing is also true of a chewing gum package?

A. Yes.

Q. 28. What would you think of any one who would mistake the gum package for the cigarette package?

A. I would say that he was crazy altogether. If anybody wants gum he doesn't want tobacco and if anybody wants tobacco he doesn't want gum.

Q. 29. Do you regard gum and tobacco in the same or in different classes?

A. Different classes entirely.

1326 Q. 30. Did you ever hear of a tobacco company putting out any food products?

A. Not that I know of.

Q. 31. Did you ever hear of a food products company making any tobacco?

A. Not to my knowledge. Maybe they did.

Q. 32. Would you prefer to handle tobacco made by a straight tobacco company, or tobacco made by a company that also makes various food products?

A. If they handle tobacco only they generally know their business better. I would rather buy from a tobacco company.

Q. 33. Is your sale of Beech-Nut gum as good as it 1327  
was before the cigarette appeared?

A. Beech-Nut gum is a slow seller with me.

Q. 34. About how many packages a week of the gum  
do you sell?

A. Very little.

Q. 35. Do you sell twenty packages of the gum a  
week?

A. About that, I would say.

Q. 36. How many packages of Beech-Nut Scrap to-  
bacco do you sell in a week?

A. About twelve dozen.

Q. 37. What is the reputation of the Lorillard Com- 1328  
pany in this community?

A. Good, to my knowledge.

Q. 38. Can you say whether the Lorillard Company  
advertises their wares and products extensively in this  
district?

A. Sure they do.

Q. 39. Do you sell the Gem razor blades?

A. Yes.

Q. 40. Do you sell Gem matches?

A. No, I have none on hand today. Sometimes I do  
sell them.

Q. 41. You have handled the Gem match? 1329

A. Yes.

Q. 42. They are not made by the same company, are  
they?

A. Not to my knowledge.

Mr. Hinton: This line of testimony is objected  
to as incompetent, irrelevant and immaterial to any  
issue in this case.

1330

*Cross Examination*

By Mr. Hinton:

X-Q. 1. Do you have a record of the number of purchases made, a record from your cash register?

A. Do you mean of the sales?

X-Q. 2. Yes.

A. I never take a note of how many people come in here in a day. It is all foolishness because some kid can come in three times a day for some little thing. It does not mean the number of customers coming in.

1331

X-Q. 3. Would that show how many sales you made a day?

A. Yes.

X-Q. 4. Would you mind telling me how many you made yesterday?

A. I don't mark down the sales, I just mark down the receipts, not the sales, because while you are sitting there I can ring up three times for you. You will order one thing and pay for it and I will ring it up and pretty soon you will order something else.

X-Q. 5. I would like to know how many times you did operate it, if you will tell me.

1332

A. I don't keep track of that.

X-Q. 6. Are you here by yourself most of the time?

A. I am always here, but I have help.

X-Q. 7. How much help?

A. One, sometimes two.

X-Q. 8. How many packages of Beech-Nut cigarettes do you sell a week?

A. About two or three cartons.

X-Q. 9. Did you ever hear any customers say anything to you about those cigarettes, any remark of any kind except to say, "Beech-Nut cigarettes" when they bought them?

A. That is about all, Beech-Nut cigarettes.

X-Q. 10. You never heard anybody express any opinion of any kind about them? 1333

A. No, sir.

X-Q. 11. As to whether they liked them or not, or anything about them?

A. When they come in for Beech-Nut cigarettes they make up their mind before they come in that they want Beech-Nut cigarettes. It is not like a man purchasing a cigar. They ask my opinion sometimes as to whether it is a good one or a bad one, in the case of cigars; but with the cigarettes they make up their minds whether they want them before they come in.

X-Q. 12. How long have you been selling tobacco? 1334

A. For the last fifteen years.

*Re-direct Examination*

By Mr. Preston:

R-D Q. 1. If you had heard a considerable number of remarks which indicated confusion in the minds of the customers, or which indicated that they thought that the same company which made the gum also makes the tobacco, would you have remembered it or wouldn't you?

A. Nobody ever asked, it never came into my mind.

R-D Q. 2. If there had been a considerable number of those inquiries, you are sure you would now remember it? 1335

A. Surely.

(Testimony of witness concluded.)

(Signature of witness waived by consent of counsel.)

1336

DANIEL M. HARBOT, a witness produced on behalf of the defendant, being by me first duly sworn, deposes and says, as follows:

*Direct Examination*

By Mr. Preston:

Q. 1. Please state your name, residence and occupation.

A. My name is Daniel M. Harbot; the address of this store is 6802 Tacony Street, Philadelphia.

1337

Q. 2. How far are we from the center of Philadelphia?

A. By rail thirteen miles and by road about nine miles.

Q. 3. How many people do you have in and out of your place a day?

A. My register goes anywhere from 200 to 325 customers, that is sales.

Q. 4. You are near the Diston Saw Works, are you not?

A. A half a square down the street are the Diston Saw Works.

1338

Q. 5. Do you serve lunches here?

A. Yes.

Q. 6. You have a great many of those workers in here to lunch?

A. Quite a few.

Q. 7. What sort of stuff do you sell here in addition to tobacco?

A. Pies, light lunches, soft drinks, ice cream, groceries of a small description.

Q. 8. Do you sell razor blades here?

A. Yes, razors and razor blades, hair-pins, shoe strings, collar buttons, gloves, candy, hosiery, suspend-

ers, false faces and other things too numerous to mention. 1339

Q. 9. Do you sell Beech-Nut Scrap Tobacco like the package I now show you?

A. Yes.

Q. 10. How long have you sold it?

A. Ever since it has been on the market.

Q. 11. How much of that do you sell a week?

A. From twelve to fifteen dozen.

Q. 12. Have you any scrap tobacco that sells as well as that Beech-Nut Scrap?

A. No.

Q. 13. Do you sell Beech-Nut cigarettes? 1340

A. I have them for sale, but I don't sell them.

Q. 14. Do you know what company makes these Beech-Nut tobacco products?

A. Lorillard makes the tobacco, but I don't know who makes the cigarettes.

Q. 15. Who would you think makes the cigarettes?

A. I don't know, I never bothered to find out.

Q. 16. Will you look at that package of cigarettes; whose name is on the front of it?

A. Lorillard. I never tried to look at it before.

Q. 17. Do you handle Beech-Nut chewing gum?

A. Yes. 1341

Q. 18. Did you ever think that the same people who made the Beech-Nut chewing gum also made the Beech-Nut cigarettes?

A. I never thought anything about it.

Q. 19. Do you know what company makes the Beech-Nut gum?

A. No, I never looked.

Q. 20. Do you think that the cigarette package looks like the gum package?

A. No.

Q. 21. Did you ever hear any remarks among your



1342 customers that indicated that they thought the same company made the gum that made the tobacco?

A. No, I never did.

Q. 22. And you yourself were never under the impression that the two things were made by the same company?

A. I never considered it, to my knowledge.

Q. 23. Can you read that name Lorillard Company on the front of that package easily through the glazed paper?

A. Yes.

1343 Q. 24. You know that it is a common custom to wrap cigarette packages in glazed paper, do you not?

A. It is lately, yes.

Q. 25. How much Beech-Nut Chewing Gum do you sell here a week?

A. About three packages.

Q. 26. How much Beech-Nut Scrap Tobacco do you sell?

A. Twelve or fifteen dozen.

Q. 27. Did you ever hear of a Tobacco company putting out food products?

A. Not to my knowledge.

1344 Q. 28. Did you ever hear of a food products company making tobacco?

A. I never heard of it.

Q. 29. Would you rather have a tobacco product made by a straight tobacco company, or one made by a food products company that made tobacco as well?

A. Candidly I guess if I chewed it I would not care where it was made as long as it was good.

Q. 30. Will you state whether or not you handle the following products: Do you sell Apple Tobacco?

A. Yes.

Q. 31. Do you sell Apple Chewing Gum?

A. Yes. That is another one like Beech-Nut cigarettes, we have it to sell, but we sell very little of it.

Q. 32. I show you a piece of the Apple Plug Tobacco and a package of the Apple gum; what is the device on the Apple Tobacco? 1345

Mr. Hinton: That speaks for itself. We object to it.

A. It is a tin tag, that is about all.

Q. 33. What does it represent?

A. It represents an apple.

Q. 34. What is the picture on the front of the gum?

A. An apple.

Q. 35. Are they both red?

A. They are.

1346

Q. 36. Do you sell Comet Playing Cards?

A. Yes.

Q. 37. And Comet Tobacco?

A. Yes.

Q. 38. Do you sell Velvet pencils?

A. I do sell them, or I did.

Q. 39. Do you sell Velvet Tobacco?

A. Yes.

Q. 40. Do you sell Chesterfield pipes?

A. No.

Mr. Hinton: This line of testimony is objected to as irrelevant. 1347

*Cross Examination.*

By Mr. Hinton:

X-Q 1. You cater to the laborers in the Diston Saw Works and their families, I suppose?

A. There are very few families in this neighborhood. The majority of them in this neighborhood are coons, as far as families are concerned.

1348 X-Q. 2. You will put in stock anything that you can sell and that you have a demand for?

A. Yes.

X-Q. 3. It does not make any difference to you who makes it, does it?

A. No, sir, not so long as it sells.

X-Q. 4. How many packages of Beech-Nut cigarettes did you sell a week when they first came out; did they go pretty well for a while?

A. For the first couple of weeks they did, yes.

X-Q. 5. Then they fell off?

A. Yes.

1349 X-Q. 6. How many are you selling now?

A. We sell a pack a week; if we sell a pack a week now we are lucky.

X-Q. 7. What made the demand for them fall off?

A. The other cigarettes dropped in price, the Camels and the Piedmonts dropped down in price. When the Beech-Nut cigarettes first came out they were twenty for fifteen cents and we were getting twenty cents for Camels and Piedmonts, and then they dropped and that knocked the sale out on Beech-Nut cigarettes.

X-Q. 8. What was your maximum sale of Beech-Nut Cigarettes in packages per week, would you say?

1350 A. When they first came out?

X-Q. 9. Yes.

A. I would say from twenty to twenty-five packs.

X-Q. 10. Never anything to amount to anything?

A. No.

*Re-direct Examination.*

By Mr. Preston:

R-D Q. 1. A cigarette package has an individuality of its own, as far as its appearance is concerned, is that true?

A. Yes.

1351

R-D Q. 2. And the gum package also has an individual appearance of its own?

A. Yes.

R-D Q. 3. Is there any similarity in the appearance of a cigarette package and a gum package?

A. There is a lot of difference between a pack of cigarettes and a pack of chewing gum, as far as the looks is concerned.

R-D Q. 4. Do you think any one could confuse the two?

A. Only if he was blind.

R-D Q. 5. And you say you sell now about a package a week of Beech-Nut cigarettes? 1352

A. Some weeks, and some weeks I don't sell a package.

R-D Q. 6. How many packages of Beech-Nut Chewing Gum do you sell a week?

A. One or two.

R-D Q. 7. How many packages of Beech-Nut Scrap Tobacco do you sell in a week?

A. From twelve to fifteen dozen.

(Testimony of witness concluded.)

(Signature of witness waived by consent of counsel.) 1353

JOSEPH COHEN, a witness produced on behalf of the defendant, being by me first duly sworn, deposes and says, as follows:

*Direct Examination.*

By Mr. Preston:

Q. 1. Please state your name, age, residence and occupation.

1354 A. My name is Joseph Cohen; my place of business is 934 North Second Street, Philadelphia, Pennsylvania; I am in the tobacco business.

Q. 2. Retail business here, are you not?

A. Yes.

Q. 3. What sorts of articles do you sell here?

A. Cigars and cigarettes.

Q. 4. Do you sell candy?

A. Not retail.

Q. 5. You sell gum, I believe?

A. Not retail.

1355 Q. 6. You do not sell any Beech-Nut gum at retail at all?

A. No.

Q. 7. Do you job tobacco and confections?

A. Yes.

Q. 8. Do you job Beech-Nut gum?

A. Yes.

Q. 9. How long have you been handling Beech-Nut Scrap tobacco like this package I now show you?

A. As long as I have been in business, seven years.

Q. 10. Is that scrap tobacco a good seller on this market?

A. Very good..

1356 Q. 11. Is there any other scrap tobacco that is as good a seller as that?

A. Not with us there is not.

Q. 12. Do you handle the Beech-Nut cigarette?

A. We do.

Q. 13. How many people come in and out of your store here a day, about?

A. Closer to a hundred than it would be to a thousand.

Q. 14. Did you ever hear any discussion or any remarks among your customers which indicated to you that they thought that the Beech-Nut Chewing Gum was

made by the same people that made the Beech-Nut Tobacco? 1357

A. No.

Q. 15. You know what people make the Beech-Nut Tobacco and the Beech-Nut Cigarettes, do you not?

A. Yes.

Q. 16. Which company is it?

A. The P. Lorillard Company.

Q. 17. You never thought yourself, that the same company made the Beech-Nut Chewing Gum and the Beech-Nut Tobacco?

A. No.

Q. 18. Do you regard the Tobacco and the gum as in the same class? 1358

A. As far as selling them is concerned I imagine they work together because it would be natural for a tobacco man to handle chewing gum. They have done it as long as I remember.

Q. 19. Do you regard tobacco and gum as in the same class of goods?

A. No.

Q. 20. Did you ever hear of a tobacco manufacturing concern that made gum and also made food products?

A. No sir.

Q. 21. Did you ever hear of a food manufacturing concern that made tobacco products? 1359

A. No sir.

Q. 22. Do you think that a cigarette package and a gum package look at all alike?

A. They have the oval there.. I never paid much attention to either one. That has the oval and the words "Beech-Nut" written in it in the same way and that may have something to do with it.

Q. 23. Is it true that a cigarette package has an individuality of its own? You know a cigarette package when you see it?

1360 A. Of course.

Q. 24. You think that no one could confuse a cigarette package with a gum package?

A. No sir.

Q. 25. Do you know the oval to be a common device upon various articles on the market?

Mr. Hinton: The question is objected to as leading.

Q. 26. Will you state whether or not you know the oval to be a common device?

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Mr. Hinton: I make the same objection.

A. I do not know. I really could not answer that. I would not think that because it had an oval that it would necessarily have to be a cigarette package.

Q. 27. Whose name is written on the front of that cigarette package underneath the label?

A. P. Lorillard Company.

Q. 28. You can read that through the glazed cover, can you not?

A. Yes.

1362

Q. 29. Would seeing that name on there indicate to you that Lorillard Company was the maker?

A. Naturally, yes.

Q. 30. You never saw a package of those cigarettes without Lorillard's name on it, did you?

A. No, I don't think I did. I have never paid much attention to that.

Q. 31. And you never heard of any one who thought that the people who make the Beech-Nut tobacco and the Beech-Nut cigarette also made the Beech-Nut gum?

Mr. Hinton: The question is objected to as calling for hearsay testimony and for the conclusion of the witness. 1363

A. No, sir.

*Cross Examination.*

By Mr. Hinton:

X-Q. 1. When did you first notice the name P. Lorillard on these Beech-Nut cigarettes?

A. I never noticed the name other than the fact that I know when the Beech-Nut cigarettes first came out that they were introduced by Lorillard's man. 1364

X-Q. 2. But you never noticed that they had that P. Lorillard on there before this moment, did you?

A. I could not say. I would not know now unless you gentlemen asked me about it and I looked at it, because I didn't pay that much attention to an individual package.

X-Q. 3. Your business is mainly jobbing?

A. Yes.

X-Q. 4. Very small retail trade?

A. Very little.

X-Q. 5. Who do you job to, what kind of people? Any particular kind of trade? 1365

A. Yes, the average small store.

X-Q. 6. Small tobacco stand?

A. Yes, or small store, a few drug stores.

X-Q. 7. Do you go out and sell goods yourself personally?

A. I do, yes.

X-Q. 8. How much of a sale have you got on these Beech-Nut Cigarettes now?

A. Very little.

X-Q. 9. What is the matter with them, do you know?



1366 Mr. Preston: The question is objected to as calling, for a conclusion of the witness.

A. Maybe it is because of the price, I don't know.

X-Q. 10. Did you have a good sale for them at the beginning?

A. Yes, for the reason that at the time they first came out the other cigarettes were much higher, that is the leading brands like Camels and Piedmonts were retailing at twenty cents and Beech-Nut came out at a cheaper price.

X-Q. 11. They will not hold their own against other  
1367 cigarettes of the same price?

A. I can not say. The cigarette may be just as good but maybe there are too many other leading brands selling for fifteen cents today so that there is not room for a cigarette of that sort.

X-Q. 12. Have you ever heard any remarks from your customers about these Beech-Nut cigarettes at all?

A. In reference to what?

X-Q. 13. About anything?

A. No, with the exception that at one time there were a few sold in town below the regular price, that is the retail price was cut, but that was mainly due, I suppose,  
1368 to the distribution.

X-Q. 14. I am talking about remarks from the customers, did you ever hear anybody say anything about the Beech-Nut cigarettes?

A. No.

X-Q. 15. Or the Beech-Nut Scrap Tobacco?

A. No.

X-Q. 16. You cannot remember any remark of any kind at the moment?

A. No.

*Re-direct Examination.*

1369

By Mr. Preston:

R-D Q. 1. Will you state whether your experience leads you to believe that the Beech-Nut Scrap Tobacco is the best tobacco seller on this market?

A. We sell more Beech-Nut Scrap Tobacco than we do any other scrap.

R-D Q. 2. Do you sell much more?

A. Yes, pretty nearly twice as much of the Beech-Nut Scrap as we do of the next best.

R-D Q. 3. Did you ever look carefully at a package of Beech-Nut cigarettes before?

1370

A. No. This has really been the first time I ever looked at it as close as I am looking at it now.

R-D Q. 4. If you had looked at it, without paying any attention to what is on there, could you fail to see that name Lorillard?

A. No, that is perfectly plain.

R-D Q. 5. And if you saw that it would seem to you that Lorillard was the maker, would it not?

A. Exactly.

R-D Q. 6. You knew before that Lorillard did make the Beech-Nut Cigarette?

A. Yes.

1371

R-D Q. 7. Will you state whether or not you assumed that Lorillard made the Beech-Nut Cigarette from the fact that you handled the Lorillard Beech-Nut Scrap and knew that they made the Scrap?

A. Yes.

(Testimony of witness concluded.)

(Signature of witness waived by consent of counsel.)

1372

It is hereby stipulated by and between counsel for the respective parties that if

M. PODOLNIC of Philadelphia, Pennsylvania, were called as a witness on behalf of the defendant, that he would testify as follows:

*Direct Examination.*

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My name is M. Podolnic; I am fifty-two years of age; my address is 320 South Street, Philadelphia. I keep a cigar and novelty store and have been in business about thirty years. I handle from five hundred to a thousand customers a day. In my novelty shop I sell suit cases, pipes, watches, clocks, canes, gum, fountain pens, cameras, razors, playing cards and other novelties, but I must say that I do not sell any of the Beech-Nut Packing Company's products, although I do sell chewing gum of other companies. Since 1915 I have been selling Lorillard's scrap tobacco and it is the best seller that I have in scrap tobacco. I have also been selling the Beech-Nut Cigarettes and I know that the Scrap Tobacco and the Cigarette are Lorillard products. I never supposed that the scrap tobacco or the cigarettes were made by the same people who put out the Beech-Nut gum. The Beech-Nut scrap is my best selling scrap tobacco. The Beech-Nut cigarettes do not sell as well with me. I do not remember having heard any of my customers make comments or remarks or inquiries of any kind about the Beech-Nut scrap, or make any remarks that would lead me to believe that they thought these products were made by the same people who made the gum.

## STIPULATION.

It is hereby stipuated by and between counsel for the respective parties that if the witness

WILLIAM SOBEL were called as a witness to testify for the defendant, the Lorillard Company, that he would testify as follows:

*Direct Examination.*

My name is William Sobel; I live at 518 South 56th Street, Philadelphia, with a place of business at 1317 Filbert Street, Philadelphia, Pennsylvania. I run a cigar and lunch room and have been in business about eight years and serve about three hundred customers a day. I have been selling Beech-Nut Scrap Tobacco since about 1915 and have also sold the Beech-Nut cigarettes. I also sell the Beech-Nut gum and mints. The Beech-Nut Scrap Tobacco is the best selling Scrap Tobacco I have, but the Beech-Nut cigarettes do not sell so well with me. It never occurred to me that the Beech-Nut Tobacco and the Beech-Nut Cigarettes were manufactured by the same people that made the Beech-Nut gum, nor did I ever hear any comments or inquiries or remarks from my customers which would lead me to believe that they thought that the tobacco and cigarettes were made by the same people that made the gum. I would think a man was crazy who would take cigarettes for gum.

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1377

*Cross Examination.*

I do not remember any customers making any remarks at all about Beech-Nut Scrap or Beech-Nut Cigarettes. I know that the Cigarettes are a Lorillard product and knew that before I saw them, as they were put in by a

- 1378 Lorillard agent. I have been handling the scrap tobacco for some years and I knew that that was a Lorillard product.

## STIPULATION.

It is stipulated by and between counsel for the respective parties that the witness WALTER I. DAVIDSON, if called to testify for the defendant Lorillard Company, would testify as follows:

*Direct Examination.*

1379

My name is Walter I. Davidson; I am twenty-seven years of age; I have a store at 712 Spring Garden Street in the business district of Philadelphia, and serve about six hundred customers a day. I sell pipes, candies, gum, razors, toilet articles and magazines. I have been selling Beech-Nut Scrap Tobacco since 1915 and the Beech-Nut cigarettes since about 1921, and I know that these are products of the P. Lorillard Company. I sell Spearmint chewing gum and also sell Beech-Nut gum. I am selling Beech-Nut gum now and have sold the Beech-Nut mints.

1380

I was never under the impression myself that the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes were made by the same people that make the Beech-Nut Chewing Gum, or the Beech-Nut mints and candies, and I never heard of any comments or inquiries or remarks from my customers which would lead me to believe that they thought that the tobaccos and cigarettes were made by the same people who make the gum. I might also say that I sell Chesterfield pipes and Chesterfield cigarettes, Apple tobacco and Apple gum, Eveready matches and Eveready safety razors, and I have also handled

Sweet Caporal cigarettes and Sweet Caporal candy cigarettes. These articles, although going by the same name, are made by different concerns. 1381

Mr. Hinton: This testimony with respect to the other articles being sold under the same name is objected to as irrelevant and immaterial, and it is stipulated that this objection may apply to this line of testimony without repetition.

*Cross Examination.*

I don't remember having heard my customers make any remarks of any kind about Beech-Nut cigarettes or scrap tobacco. The Beech-Nut cigarettes were put in by a Lorillard agent and I knew who made them before I saw the goods. I have been handling the scrap tobacco for several years and it is my best seller. 1382

1384 IN THE UNITED STATES DISTRICT COURT, DISTRICT OF  
NEW JERSEY.

Beech-Nut Packing Company,

*Plaintiff,*

*vs.*

P. Lorillard Company,

*Defendant.*

No. 3056.

In Equity

County of Philadelphia, )  
State of Pennsylvania, ) ss.:

1385 I, Edward N. Legg, a Notary Public, in and for the  
County of Philadelphia, State of Pennsylvania, acting  
as Special Examiner by consent of Counsel, do hereby  
certify that the foregoing depositions of William  
Waschler, Samuel B. Welsh, Benjamin Newman, Harry  
S. Sylk, Davis Ornstern, Edward G. Hoch, Fred. J. Hahn,  
Franklin P. Stern, Louis Gray, Harry A. Linn, Daniel  
M. Harbot and Joseph Cohen, were taken on behalf of  
P. Lorillard Company, defendant, pursuant to agreement  
and notice, before me, in the City and County of Phila-  
delphia, State of Pennsylvania, beginning on the 13th  
day of December, 1922, and ending on the 14th day of  
December, 1922; that each of the above named witness  
1386 was by me duly sworn; that the testimony of said wit-  
nesses was taken in shorthand, under my supervision, by  
Lafayette P. Temple, a Court Reporter, and thereafter  
reduced to typewriting; that the opposing party was  
represented by Sebastian Hinton, Esq., of Counsel, during  
the taking of said testimony; that by agreement of coun-  
sel the signature of each of the witnesses was waived,  
as indicated on the depositions.

I am not connected by blood or marriage with either of  
the parties hereto, nor interested directly or indirectly  
in the matter in controversy.

EDWARD N. LEGG,

Notary Public.

My Commission expires Jan. 20, 1927.

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

Beech-Nut Packing Co.,

Plaintiff,

vs.

P. Lorillard Company,

Defendant.

In Equity No. 3056.

Depositions taken in behalf of P. Lorillard Company, defendant, before Henry F. Weller, a Notary Public and Court Reporter, acting as Special Master, by consent of counsel, pursuant to notice and by agreement of counsel, at the office of Francis X. Boden, Majestic Building, Milwaukee, Wisconsin, beginning Monday, January 29, 1923, at 2:30 o'clock P. M.

1388

Present: H. McClure Johnson of Offield, Poole, Hinton & Scott, for Beech-Nut Packing Company; Richard B. Cavanagh of Meyers, Cavanagh & Whitehead and Thomas L. Preston for P. Lorillard Company.

WILLIAM GOLDSTEIN, a witness produced in behalf of defendant, being first duly sworn, in response to interrogatories propounded to him by Mr. Cavanagh, deposes and says, as follows:

1389

Q.1. Please state your name, age, residence and occupation.

A. William Goldstein, age 32, residence 4839 Hutchison Street, Chicago, Illinois, I am head salesman for P. Lorillard Company in the Cigarette Department, which is called the S. Anargyros cigarette department.

Q.2. How long have you been connected with P. Lorillard Co.?

A. I have been with P. Lorillard Company since the



1390 dissolution of the American Tobacco Company in 1911. It has been eleven years, I should judge ten or eleven years, I started sometime during the summer months, I don't remember exactly which date it was.

Q. 3. What territory do you cover at the present time and what are your duties?

A. At the present time I am the assistant of Mr. C. W. Burkley who is the head salesman in charge of the cigarette department in Cook County, Illinois, Lake County, Indiana, and Lake County, Illinois. I look after the cigarette department, the S. Anargyros cigarette business in the city of Chicago and the adjoining territory mentioned, calling on jobbers, calling on retailers, work with our retail salesmen, in other words, generally looking after the interest of the products listed under the S. Anargyros name, Murad, Egyptian Deities, Helmar, Mogul, London Life and Turkish Trophies cigarettes.

1391

Q. 4. How long have you been engaged on these duties in this Chicago territory?

A. Since January 5, 1922.

Q. 5. Where were you before that? What did you do?

A. I had charge of the state of Wisconsin from January 3rd, 1921, up to December 16th, 1921, that is for about a year as head salesman in charge of the S. Anargyros cigarette department of the Lorillard Tobacco Company. I was given charge of the marketing of Beech-Nut cigarettes which was introduced in the Milwaukee territory on September 26th, 1921.

1392

Q. 6. Then, as I understand it, you were located here in the territory of Wisconsin for about one year, from January, 1921, until December, 1921, is that correct?

A. Yes, sir.

Q. 7. And where were your headquarters?

A. Milwaukee, Wisconsin.

Q. 8. What address?

1393

A. 84 Detroit Street.

Q. 9. And what duties did you perform during that year's period when you were in the Milwaukee territory?

A. I called on jobbers, called on retail dealers, interviewed consumers in the interest of the sale of the S. Anargyros brand of cigarettes, worked with my retail salesmen and generally looked after the promotion end of the brands of cigarettes known as Egyptian Deities, Murads, Mogul, Luxury, Helmar, London Life and Turkish Trophies.

Q. 10. What was your position or what was your title?

1394

A. Head salesman.

Q. 11. Did you have salesmen under you?

A. Yes, sir, from January, 1921, until the early part of September I had two men. From September until the end of the year I had three in my department and during the Beech-Nut campaign I was given the assistance of another man who worked in the tobacco department, which gave me a total of four at the end of the year.

Q. 12. What do you mean by the "Beech-Nut campaign"?

A. The marketing of Beech-Nut cigarettes.

1395

Q. 13. When was that cigarette introduced into this Wisconsin territory under your charge?

A. September 26th, 1921.

Q. 14. How long did you continue to have charge of this introductory campaign?

A. Until our vacation period, which commenced on December 16th, 1921.

Q. 15. Now will you just tell us in your own words precisely what system or procedure you followed in introducing the Beech-Nut cigarettes into the Wisconsin

1396 territory, beginning, as you have stated, September 26th, 1921?

A. The most essential thing in marketing a new product of that kind is to get the distribution, when you are selling the retail dealers, and while we are selling the retail dealers we had the general duties which consists of different advertising which is furnished by the company, indoor advertising and exterior advertising. Along with that we sample customers who we find are smoking competitive brands of cigarettes. About the first effort was to place the cigarettes with the retail dealer in getting our distribution. Then second was the getting the  
1397 general distribution of our advertising matter, third was the sampling and building consumption for the brand we were placing on the market.

Q. 16. How many men did you have under you as a crew in introducing this brand during this campaign?

A. Five including myself.

Q. 17. Now, I want you to tell me just exactly how a man would proceed to introduce the brand to the retailer or to the trade.

A. Well, first he is given territory in the morning which he is expected to cover that day. Then he is given the allotment of cigarettes which he carries along to sell  
1398 for cash in order to get immediate distribution and get them on sale right there before the consumer. When you call on the retailer you introduce yourself as a salesman of the P. Lorillard Company, advise the dealer, "We are making Beech-Nut cigarettes, the latest addition to the numerous brands made by the P. Lorillard Company", and we would go on and tell that we were the manufacturers of Beech-Nut scrap tobacco and the tremendous popularity of the brand, then we would go on and tell him we were also manufacturers of such well-known brands of cigarettes as Egyptian Deities, Helmar and Murad cigarettes and tell him the brands put on had

to sell for fifteen, twenty and twenty-five cents and due to the fact all other brands of this character and class are selling for twenty and eighteen cents, there is no doubt in the world, due to the high qualities of Beech-Nut cigarettes you will have some ready sales in this brand. Some salesmen would call attention to the fact they had been marketed in other territories and met with great success. And he would open up his carton, his carton would have been open at all times while talking to the retailer, and he would say, "I want very much to leave this little package of Beech-Nut cigarettes, it will cost you \$1.14", and take out his order book and commence to write up the order, and the dealer would say, "All right, I will take it", and the salesman would write up an original and duplicate and make a tissue copy also, handing the white copy to the dealer, and bring the other copy back to me to show where he placed the cigarettes. That is the way the average salesman would talk to the retailer or jobber.

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1400

Q. 18. How do you know he would proceed that way?

A. Because he was taught along those lines by myself in charge of the territory. When we opened up the campaign we had a little school. We went a day or two before the campaign and were told these things.

Q. 19. Now, when a salesman would go into a store what would he have with him, if anything?

1401

A. When he would go in a store, his earlier calls he would make in the morning, he would have two thousand Beech-Nut cigarettes consisting of ten cartons of this size (witness shows carton of Beech-Nut cigarettes containing ten packages) which contain two hundred cigarettes. Then he would carry along the various advertising material, which, at the opening of the campaign consisted of window posters, interior card tackers and exterior tackers used on the outside of the dealer's store front and in all cases he was instructed when he called

1402 on a dealer, after he had sold them, to tear off these edges (indicating edges of carton), tear off the end flap on the carton and place the carton card inside and ask the dealer if he would not allow him to place this on the cigar counter so it would be readily seen by the consumer. Then his instructions were to get the window poster on a dealer's store that he sold cigarettes to, and if possible to get some of the other advertising material displayed which he carried along with him. At all times salesmen were sufficiently supplied with advertising material which was the most essential thing in the promotion of the brand, creating business on the brand.

1403

Mr. Johnson: Objection to all that part of this witness' testimony in which he tells what the agents would do.

Q. 20. (Mr. Cavanagh.) Upon what do you base your statement that the agents would do this?

1404

A. Well, because as I told you, in the early part here it has been customary at all times in marketing a new brand or when we had new work to perform, the head salesmen were requested to school their retail men on the proper line of work expected of them, and naturally I would take it for granted the men instructed would follow out my instructions, and if they did not follow out along those lines and after I had checked up their territory and found out from the retail dealers they didn't do that, I immediately dispensed with their services.

Q. 21. Did you personally take part in the introduction and sale of this Beech-Nut brand of cigarettes beginning September 26th, 1922? That is, did you visit the trade and introduce it?

A. Yes, sir.

Q. 22. Where?

A. I worked what I call in Milwaukee the Loop or downtown district. I worked the sections bounded by the river or Sycamore Street up to Wells Street and possibly four or five blocks the other side of East Water Street going east, up as far as Byram's Store on Grand Avenue, which took in the immediate downtown, all of the important dealers in the town. 1405

Q. 23. That is, sir, it included the business section of Milwaukee?

A. Yes, sir, and then I incidently worked with my retail salesmen from day to day, calling on retail dealers and placing advertising matter and sampling consumers, everything to promote the creation of the demand, which naturally a man would do. 1406

Q. 24. So as to avoid a long repetition, did you or did you not follow out the procedure or system in introducing the brand that you have described as the instructions to your salesmen?

A. Absolutely, in every detail.

Q. 25. You followed that out?

A. Absolutely.

Q. 26. That card to which you refer as having asked the retailer to permit you to stick into the carton of Beech-Nut cigarettes and put on the counter, will you read what it says on that card, so we will have it on the record? 1407

A. "Lorillard's Beech-Nut Perfect Cigarettes, 20 for 15 Cents, Mildest of Them All."

Q. 27. That is a small yellow card about three inches by five or six?

A. Five or six inches.

Q. 28. And that comes in each carton of cigarettes?

A. Yes, sir.

Q. 29. For how long a period were you engaged in this work of introducing the Beech-Nut cigarettes in Milwaukee?

1408 A. From September 26th, 1921, up until vacation period started, December 16th, 1921.

Q. 30. Now, where else outside of Milwaukee in the state of Wisconsin did you personally have charge of a crew introducing this cigarette?

A. Nowhere else.

Q. 31. Just the city of Milwaukee?

A. Just the city of Milwaukee, yes, this territory included Waukesha County, Racine County and Kenosha County.

Q. 32. Then you did go outside the city of Milwaukee?

1409 A. Yes, sir.

Q. 33. Into neighboring cities or towns?

A. Yes, sir.

Q. 34. Are you acquainted with the Lorillard Beech-Nut scrap tobacco?

A. Yes, sir.

Q. 35. How long, to your knowledge, has that scrap tobacco been on sale in Milwaukee and vicinity?

A. Well, I have understood it was placed in this market sometime during the year 1919, the latter part.

By Mr. Johnson: Objection, as hearsay.

1410

By Mr. Cavanagh:

Q. 36. Mr. Goldstein, are you acquainted with Mr. E. R. Lewis, who, I understand, is or was division representative of the Beech-Nut Packing Company in Milwaukee?

A. Yes, sir, I was introduced to him by a retail dealer in the city here.

Q. 37. Mr. Lewis has testified on behalf of the Beech-Nut Packing Company in this case and has stated he was acquainted with you and that he met you about the time

you first came here, that is around the first of the year 1921. What have you to say as to that? 1411

A. To my knowledge the first time I met Mr. Lewis was in the cigar store known as the "Loop Cigar Store" located on East Water near Wisconsin, and was introduced to the gentleman by a clerk in this store known as Charlie Tuckwell. I came in there about nine o'clock one morning and Mr. Lewis and another gentleman was in the store, I didn't learn the other gentleman's name, and as I walked in Mr. Tuckwell called me over and said—I am known as "Bill" to Tuckwell, never known as Goldstein, we are very good friends, he said, "Bill, this is Mr. Lewis, representative of the Beech-Nut Packing Company." 1412

Q. 38. And about when was that?

A. Sometime between September 26th, 1921, and October 5, 1921.

Q. 39. And that was the first time you ever met Mr. Lewis?

A. Yes, sir.

Q. 40. And you were introduced to him by Mr. Tuckwell?

A. By Mr. Tuckwell as the P. Lorillard Company representative in charge of Beech-Nut cigarettes.

Q. 41. So, as far as your knowledge goes, you did not meet Mr. Lewis around there the first of the year 1921 when you first came here? 1413

A. Absolutely not.

Q. 42. Mr. Lewis has testified for the Beech-Nut Packing Company that he first met you about the first of this year (meaning 1921) at the store of A. S. Goodrich. Do you agree with that?

A. No, sir, I do not recall meeting him in A. S. Goodrich's store at any time.

Q. 43. Now, Mr. Goldstein, as I understand it, you say you were introduced to a Mr. Lewis, the Beech-Nut



1414 Packing Company representative, by Mr. Tuckwell at the store where the latter was employed, sometime around or shortly after September 26th, 1921. Is that correct?

A. Yes, sir.

Q. 44. And I understand you to say there was another man with Mr. Lewis at the time?

A. Yes, sir.

Q. 45. Did you know that gentleman's name?

A. No, sir, I was never introduced to that gentleman. I know he was in the company of Mr. Lewis because he talked to Mr. Lewis, but I was never introduced to him.

1415 Q. 46. Was anyone else present when you met Mr. Lewis?

A. Well, there were several people in the store which is quite a hang-out, you know, for different people in there, but nobody paid any particular attention outside of Mr. Tuckwell, who introduced us, and he was present during the entire time I was in this particular store in the company of Mr. Lewis.

Q. 47. The Beech-Nut cigarette was not on sale in this territory the first of the year, in January, 1921, was it?

By Mr. Johnson: Object to that as a leading question.

1416

A. No, sir. .

By Mr. Cavanagh:

Q. 48. Mr. Lewis in his deposition for the plaintiff has testified that when he first met you in the fore part of the year (1921) you told him about the sale of Beech-Nut cigarettes in the east, what have you to say as to that?

A. No, sir, I have never had any conversation with Mr. Lewis or never had any acquaintance with Mr.

Lewis prior to the time we marketed the Beech-Nut cigarettes in September, 1921. 1417

By Mr. Johnson: Objection to the manner in which these questions are being asked. If Mr. Cavanagh wants to get this information he can get the witness's story without reading from the record.

Mr. Cavanagh: Without entering into any argument with counsel it is obvious that following the usual practice in taking of depositions going to the presentation of evidence it is necessary not only to present the evidence on behalf of the defendant, but to distinguish and if not a fact to re-but the evidence given on behalf of the plaintiff, and Mr. Cavanagh is referring to the record solely and for the purpose alone of making sure that he does no injustice to this plaintiff by inadvertently misquoting or misinterpreting any statements of plaintiff's witnesses. 1418

By Mr. Johnson: Objection to all questions put in this manner.

By Mr. Cavanagh:

Q. 49. Now, Mr. Goldstein, I want you to tell us in your own words just exactly what took place and what conversation you had with Mr. Lewis of the Beech-Nut Packing Company when or after you were introduced to him by Mr. Tuckwell, which you say was the first time you met him. 1419

A. Well, after I was introduced to Mr. Lewis—I was introduced to him as a Lorillard representative in charge of Beech-Nut cigarettes and he was introduced to me as a Beech-Nut Packing Company representative in charge of Beech-Nut gum and Mr. Lewis asked me whether we were putting on a very big campaign on Beech-Nut cigarettes and I said, "Yes." He said, "What success are you meeting with?" I said, "As well as we had hoped

- 1420 for the brand is doing very nicely." And he asked me if we made any other Beech-Nut brand and I said, "Yes, sir, we manufacture Beech-Nut scrap and Beech-Nut plug", and I asked him if he had ever heard of Beech-Nut scrap and called his attention to the fact Beech-Nut scrap was a tremendous big seller in the city of Milwaukee, and he said, "Yes, I have heard of it in Pennsylvania some years ago, it was a very big brand over there." We talked about general things and I just don't remember the exact words that transpired. We talked about the marketing of Beech-Nut cigarettes and I told him it was a very good quality of cigarette and we hoped
- 1421 to make a big seller out of it. But I had an appointment at nine-thirty with one of my jobbers and I told him I would have to run along, I had an appointment to keep, and I opened up a carton of cigarettes, which I carried at all times to use as samples in sampling consumers and I asked Mr. Lewis if he smoked and he said yes, and I presented both Mr. Lewis and his friend with packages of Beech-Nut cigarettes and I told him I thought he would find Beech-Nut cigarettes as high a quality as the rest of the Beech-Nut line, particularly Beech-Nut scrap tobacco. Then Mr. Tuckwell, who was back of the counter, and present at the conversation, due to the fact he was
- 1422 not a smoker of domestic, but smoked Turkish cigarettes. I presented him with a couple of packages of Murad cigarettes, and he invited us across the street to have a soft drink, and we went across the street into an ice cream parlor and the three of us had a Coca Cola and we stood around there and talked about different things that possibly any salesman would talk about, you know, but in parting I said to Mr. Lewis, "If you can do anything to help further the sale of Beech-Nut cigarettes I will appreciate it, and in turn if I can do anything for Beech-Nut gum I will reciprocate" and with that we parted.

Q. 50. How many times after that do you recollect meeting Mr. Lewis, if you did? 1423

A. To my knowledge the second time I met Mr. Lewis was in a cigar store known as Kerns & Son, which was across the street from the Loop Cigar Store. I don't just recall whether Mr. Lewis was in there with a friend of his or whether I was in this store first, and he came in, and at this meeting I was introduced to another gentleman, I don't just recall his name, and we chatted a little bit and during this conversation nothing was said about tobacco, cigarettes or gum or anything else, and on leaving I had some business to transact with Milton Kerns, who was manager of this store and on leaving I noticed his friend was smoking a cigar and I presented Mr. Lewis with a package of cigarettes, knowing he was a cigarette smoker and I asked his friend if he indulged in cigarettes and he told me he did not, so I didn't give him any, and with that I left. 1424

Q. 51. Please state whether or not on that occasion you had any conversation about the Beech-Nut cigarettes or Beech-Nut gum, further than offering him the cigarettes?

A. Absolutely not.

Q. 52. Did you meet him on any other occasion, to your knowledge? 1425

A. Yes, the next time after that I met him in Kenosha, Wisconsin. He was in a jobber's known as Beck & Mahlsted, I came into this jobbing house and Mr. Lewis was there and I believe that at this meeting Mr. Dick Mahlsted, who is part owner in this business, was there, and the only thing was mentioned about cigarettes or gum was, he said, "Well, it is a funny thing, here is a Beech-Nut cigarette man and a Beech-Nut gum man, you fellows ought to get along pretty well."

Q. 53. Who said that?

1426 A. Mr. Mahlsted. And I said, "Yes, I know Mr. Lewis and we get along very nicely together."

Q. 54. Is that all that happened on that day?

A. That is all happened in that place.

Q. 55. And do you recollect ever meeting Mr. Lewis at any other place at any other time?

A. No, sir, not to my knowledge. Absolutely never had any other meetings with him.

Q. 56. When you were first introduced to Mr. Lewis it was made known to you that he was a Beech-Nut Packing Company salesman?

A. Absolutely, I know that clearly.

1427 Q. 57. And it was made known to him that you were a P. Lorillard Company representative?

A. I was introduced to him as the P. Lorillard representative of Beech-Nut cigarettes. If his hearing was good he surely knew I was.

Q. 58. Now, as I understand your testimony, you had charge of the introductory or missionary crew in Milwaukee or territory on this Beech-Nut cigarette, starting about September, 1921. Will you please state whether or not you gave the members of this crew any instructions in connection with the introduction of Beech-Nut cigarettes, and in connection with the products of the

1428 Beech-Nut Packing Company?

A. Yes, sir, I did.

Q. 59. Tell us in your own words what you did.

A. At one of the meetings that we had, and many times after that I called their particular attention to the fact that Beech-Nut cigarettes was the product of Lorillard Tobacco Company, as they knew, and in calling on retail dealers to make it very clear to them that the Beech-Nut cigarettes were manufactured by P. Lorillard Company so there would be no confusion. The reason I did that, I had read in a tobacco journal and possibly some other papers that there was some sort of

suit going on at the time about the label or trade mark, 1429  
 and I didn't want my salesmen to be the cause of any  
 confusion to the retail dealers or consumers they may  
 have sampled in the course of a day's work, which I  
 knew was the wish of the company at the time, and  
 every man was instructed to make it very clear to the  
 retail dealer, before he even showed him the Beech-Nut  
 cigarettes, during his introduction to them to say, "I  
 represent the Lorillard Tobacco Company, we are now  
 putting on Beech-Nut cigarettes," and in mentioning  
 Beech-Nut cigarettes to also mention, "We are also the  
 manufacturers of Beech-Nut scrap tobacco and such 1430  
 other famous brands of cigarettes as Murads, Egyptian  
 Dieties and Helmar cigarettes." They were also told  
 in sampling consumers, when they made their approach  
 to the prospective consumer and sampled them on  
 Beech-Nut cigarettes to call attention to the fact Beech-  
 Nut was manufactured by the P. Lorillard Company,  
 manufacturers of Murads, Egyptian Dieties and Hel-  
 mar cigarettes, which were the largest selling high-  
 grade cigarettes in the United States. And I made  
 sure this instruction was followed out, and I also called  
 on retail dealers with my salesmen and every time I  
 was with them they used just such instructions as I  
 gave them.

Q. 60. When you made a sale of Beech-Nut ciga- 1431  
 rettes in this introductory campaign in this territory,  
 that is, to the retailer, just exactly what took place?  
 Did you take cash and give them the receipt or what  
 did you do?

A. The dealer was sold a carton of cigarettes in all  
 cases where he wished to buy it direct from our sales-  
 man, and in such cases he was given a carton or two,  
 whichever quantity he bought, and he was given a re-  
 ceipt for it, which we call a retail order blank. I be-  
 lieve there is one of the blanks there now (indicating).

1432 Mr. Johnson: I want an objection to this testimony in which the witness tells what his salesman did, as being hearsay only, and secondary evidence.

It is stipulated that this objection shall apply to all testimony of this character without repetition.

By Mr. Cavanagh:

Q. 61. I understood you to testify that you have personally solicited retailers and dealers on this Beech-Nut cigarette during the introductory campaign and have personally sold the cigarettes. Will you tell me just exactly what you did when you sold the cigarettes to the dealers?

1433

A. Well, whenever I sold the dealers a carton or whichever quantity of cigarettes he might have wanted, if I could interest him to buy them for cash I gave him his wished quota, giving him a receipt in what we call a retail order blank made out in original, duplicate and tissue paper copy, marked on there his name, put on there "Cash Sale," his address, the quantity of cigarettes purchased, and the selling price, marked on there "Paid," and then signed my name to it.

1434 (The three sheets referred to are marked defendant's Exhibit 10 A, 10 B, and 10 C, respectively for identification.)

The Witness: (Continuing) Of the three sheets, the white one marked "A" I gave to the customer, the one marked "B" was attached to the duplicate daily report as a record in our office as to who the cigarettes were sold to, and the thin tissue paper sheet marked "C" was kept in our order book for a record for the particular salesman who sold the goods.

Q. 63. What appears printed at the top of that white slip "A" and the yellow slip "B"?

A. "P. Lorillard Co., Inc. 119 West 40th Street, 1435  
New York, N. Y."

By Mr. Cavanagh: The triplicate sheets produced and referred to by the witness are fastened together to form one exhibit and are now offered in evidence and the Notary is requested to mark the same Defendant's Exhibit 10 A, 10 B, 10 C, retail order blanks.

Q. 64. So far as your knowledge extends, from whom would the retailer subsequently obtain the repeat orders of the cigarettes, if he wanted it?

A. Well, most generally he would get it from the jobber, but in some cases he purchased them from our retail salesmen on our re-canvassing of the trade after the first introductory visits were made. In such orders we call them reorders.

1436

Q. 65. Will you please state from your own knowledge whether or not you ever knew one of your salesmen on this campaign to go into a store without advertising matter?

A. Absolutely not.

Q. 66. Likewise will you please state whether or not a salesman to your knowledge would go to a store or did go into a store with only one package of cigarettes?

1437

A. No, sir.

Q. 67. What did he usually take in there, so far as you know?

A. He usually carried in the cigarettes he had to sell for cash. He was thoroughly instructed if it was any time before five o'clock, which was usually the hour for him to quit work, between five and five-thirty, if he ran out of selling stock to come back to the warehouse or go to the nearest jobber to his territory and re-



1438 purchase the amount of cigarettes he had sold during that day's work. Therefore at all times when he called on retail dealers he had sufficient cigarettes to sell for cash to the retailer.

Q. 68. In addition to introducing and selling the cigarettes yourself, personally, to the retail trade around Milwaukee, will you please state whether or not you ever accompanied any of your salesmen into a store?

A. Yes, I have at different times, when I check up on our territory and meet them on our territory I usually spend an hour or two with them, call on retail dealers and show them the proper way to approach a dealer and the proper way to sell him, particularly the sampling of consumers.

1439

Q. 69. Do you know a party here in Milwaukee by the name of J. Brimakow?

A. Yes, sir, he was a retail clerk in a drug store that I did business with, he was known as the manager of the cigar department of Kiefer Drug Company.

Q. 70. Where was that concern located?

A. West Water Street.

Q. 71. Do you know of your own knowledge whether Mr. Brimakow purchased for his concern any Beech-Nut cigarettes, and if so will you state the circumstances as you know them?

1440

A. Well, it was about a month prior to the time we had marketed the brand, I made one of my usual visits to his store and had sold him some Murad and Helmar cigarettes, and he said he had had a call for Beech-Nut cigarettes, and I said, "Yes, that is one of our products, you know that, don't you, Joe?" and he said, "Yes, I know Lorillard Company makes them, can't you get some of them?", I said, "No, I am sorry, I don't know when my company will get ready to market the brand here, but they have been placed on the eastern market and, as I understand, they are moving along very well, and no

doubt those consumers who have been calling for them have just come from the east, and then he said, "Yes, they did." Sometime after that I called on Brimakow, about two weeks later, and he had Beech-Nut cigarettes in stock and I inquired as to the sale of them and he said they were moving along very well, he had a brand on sale for fifteen cents, which was the regular price and due to the fact I had received some correspondence from the company requesting me to make positive that Beech-Nut cigarettes were not placed on sale in any part of my territory until September 26th, which was set as the opening day of the campaign, I asked Mr. Brimakow if he would not refrain from selling the Beech-Nut cigarettes until such time as we got ready to market the brand, as other dealers had called for them, due to the fact he was selling them, and I was unable to supply them and it was causing hard feelings among some of my good friends among the trade. And I had this conversation, I asked him where he had obtained his Beech-Nut cigarettes and he told me from the National Cigar Company at Chicago, Illinois, which is one of the direct buyers of the Lorillard Tobacco Company. At this interview I had with him he promised me he would stop selling the brand. Two or three days later I received some information he had still some Beech-Nut cigarettes on sale. I had written my Company to tell them the circumstances, that Beech-Nut cigarettes were on sale in Milwaukee, Wisconsin, and being supplied by the National Cigar Company, and I requested them to ship Beech-Nut cigarettes into Milwaukee, which they did. And while all this correspondence was going on this market was opened up on Beech-Nut cigarettes and I believe up until that time Mr. Brimakow had sold approximately forty thousand Beech-Nut cigarettes.

1441

1442

1443

- 1444 Mr. Johnson: Objection to that part of this answer which is hearsay only and not good evidence from this witness.

By Mr. Cavanagh:

Q. 72. So Mr. Brimakow had the cigarettes on sale before you started the campaign here on September 26th, 1921?

A. Yes, sir.

- 1445 Q. 73. Did you ever tell Mr. Brimakow that he would be discontinued handling it if he did not uphold the price on the Beech-Nut cigarettes?

A. No, sir. The day prior to the marketing of this brand, September 26th, I called on all large cut-rate dealers in the city of Milwaukee and told them that due to the fact Beech-Nut cigarettes was a high quality cigarette, we were going to try to market Beech-Nut cigarettes as a fifteen cent cigarette, and I would personally appreciate it if these cut-rate dealers who had built their business on cut-rate business would refrain from cutting the price on Beech-Nut cigarettes as I did not think it necessary to sell Beech-Nut cigarettes cheaper than fifteen cents.

- 1446 Mr. Johnson: Objection to this answer as not responsive.

By Mr. Cavanagh:

Q. 74. Is that all the conversations you had about that?

A. Yes, sir.

Q. 75. Did you know Mr. Brimakow before he went to work for the Kiefer Drug Company?

A. Yes, sir.

Q. 76. Where was he working?

A. I first met Mr. Brimakow after I came into the territory, January, 1921, at the Central Drug Company. At that time he was manager of the cigar department. 1447

Q. 77. Where is the Central Drug Company located?

A. On Third Street.

Q. 78. Who runs it?

A. At that time it was run by a gentleman named Reinhardt; since then it has been run by Mr. Reinhardt and Mr. Kemp, who, I believe, were joint partners in this business.

Q. 79. To your own personal knowledge is Mr. Brimakow with the Kiefer Drug Company?

A. I am almost positive he is not.

1448

Q. 80. But you don't know yourself?

A. I am positive he is not.

Q. 81. Will you please state whether or not you, at any time, or upon any occasion represented, stated or intimated to any person or dealer that the Beech-Nut cigarettes or Beech-Nut scrap tobacco were made by the same concern that makes the Beech-Nut food products, chewing gum and other like products, that is, the Beech-Nut Packing Company?

A. Absolutely not, never.

Q. 82. Would you state whether or not you ever knew any of your agents to make such representation?

1449

A. Never.

Mr. Johnson: Objection to that last question and answer as an opinion of the witness, unfounded on anything that has preceded.

Q. 83. (Mr. Cavanagh.) It has been testified to on behalf of plaintiff in this case by one Clarence W. Smith that he met you in Kerns & Son Cigar Store on East Water Street in Milwaukee the latter part of 1921, while he was in company with Mr. Lewis of the Beech-Nut

- 1450 Packing Company and that you exhibited a package of cigarettes and said, "These cigarettes are quality goods like the rest of the Beech-Nut line." Did you ever make any such statement in Kerns & Sons Cigar Store?

Mr. Johnson: Objection to the manner in which this and all similar questions are put to the witness.

- A. No, sir, there was no remark made in regard to the quality of the brand or the character of the cigarette. The only thing I said at that meeting, at which Mr. Smith was present in company with Mr. Lewis, I presented Mr. Lewis with a cigarette, due to the fact I knew he was a cigarette smoker, and I asked Mr. Smith, who was the gentleman with Mr. Lewis at the time, whether he indulged in cigarettes and he promptly told me he did not indulge in cigarettes and possibly the exhibit he referred to is the package I offered him when I asked him if he was a cigarette smoker.

Q. 84. Is that all that occurred?

A. Yes, sir.

Q. 85. Did you know whether his name was Smith or not?

- A. I couldn't say. As I mentioned in the early part of my testimony I did not remember the gentleman's name in the company of Mr. Lewis, but I remembered that Mr. Lewis had a party with him and I was introduced to him. This was the second meeting in Henry Kerns & Sons Cigar Store.

(Direct Examination Closed.)

Adjourned to January 30th, at 10:00 A. M.

Jan. 30th, at 10:00 A. M.

1453

Met pursuant to adjournment, parties appearing as before.

*Cross Examination.*

By Mr. Johnson:

X-Q. 86. Mr. Goldstein, are you employed by P. Lorillard Company?

A. Yes, sir.

X-Q. 87. How long were you working in Milwaukee for them?

1454

A. Just one year.

X-Q. 88. What were the dates when you came to Milwaukee for the P. Lorillard Company, and the date you left Milwaukee

A. I took charge of the Wisconsin territory on January 5th, 1921, and left here at the commencement of winter vacation on December 16th, 1921, and I was transferred to Chicago territory, which took effect January 3rd, 1922.

X-Q. 89. Was your vacation time in between December 16th and January 5th?

A. That was vacation period, a little over two weeks. I think about fifteen days.

1455

X-Q. 90. How long have you been with the P. Lorillard Company all together?

A. Since 1911, about eleven years excluding the time I put in the service, in the United States Army.

X-Q. 91. What have you been doing for them during the rest of the time?

A. I was employed in Chicago—do you wish me to give you an idea of just what I have done for them?

X-Q. 92. Yes, just briefly.

A. I commenced as retail salesman and for four or five years I travelled—

1456 X-Q. 93. When was that?

A. From 1911 until about 1916, I believe. I covered practically all states east of Illinois on different campaigns, introductory and advertising campaigns and sampling campaigns and then I believe it was the latter part of 1916 or early part of 1917 I was promoted to head salesman.

X-Q. 94. Were you working out of Chicago during that time?

1457 A. No, I worked at various headquarters, different headquarters, Detroit and Cleveland and sometimes it was Boston, and that is about all. Cleveland, Detroit and Boston were the different headquarters I worked in during the time I was a retail salesman for them.

X-Q. 95. Did you take part in a number of introductory campaigns in new brands during that time?

A. Yes, sir.

X-Q. 96. What did you do for them after 1916?

1458 A. I believe it was the latter part of 1916 or early part of 1917 I was promoted to the head salesmanship, still working under the supervision of a head salesman named H. A. Asby. I met Mr. Asby in Akron, Ohio, and I was advised I was promoted to head salesman to take charge of the Colorado territory, which embraced Colorado and part of Wyoming. I stayed in that territory until I was called to service in the United States Army.

X-Q. 97. When was that?

A. That was the latter part of—about the middle of 1918, I believe. I just don't know the exact date.

X-Q. 98. When did you get out of military service?

A. In January, 1919.

X-Q. 99. What did you do then?

A. Then I went to Utah and took charge of Utah as head salesman, which embraced the territories of Idaho—

X-Q. 100. For whom?

A. Lorillard Tobacco Company—which embraced the territories of Utah, Idaho, part of Nevada and a part of Wyoming. 1459

X-Q. 101. How long were you there?

A. I was there until I was transferred to Milwaukee in January, 1921.

X-Q. 102. Did you take part in any introductory campaigns of new brands while you were there in that Utah-Idaho-Wyoming district?

A. Why, yes, I introduced Windsor Castle Fags cigarettes.

X-Q. 103. Will you name some of the brands that you introduced during the time you have been with the P. Lorillard Company? 1460

A. Well, the campaigns I personally conducted were on Windsor Castle Fags while I was out in Utah, and Beech-Nut cigarette campaign from September 26th, 1921, up until the time I left Milwaukee territory, those were the only two campaigns I personally conducted, but I assisted in different works which consisted in marketing such new brands as London Life, Nebos, Zira, Zubelda's and Tiger cigarettes.

X-Q. 104. Any others?

A. That is all of the new brands.

X-Q. 105. Can you name any of those brands which you have just mentioned that the Lorillard Company had taken over from other companies? 1461

A. No, all these brands I have mentioned are brands represented by trade marks that Lorillard Company had personally controlled. I never worked on another brand that the company had taken over from other manufacturers. London Life was an origination of the company, likewise with Tigers, likewise with Nebos, likewise with Zira and Zubelda. And the last brand I worked on was Beech-Nut which the company had scrap tobacco on the market by the same name for several years, and Beech-Nut plug.



1462 X-Q. 106. Do you know whether any of these brands you have mentioned were made by subsidiary companies?

A. No sir, these brands were all manufactured by the Lorillard Company.

X-Q. 107. Were any of these Anargyros brands?

A. London Life was an Anargyros brand, but it is not a subsidiary of P. Lorillard Company, it is just a trade name the P. Lorillard Company had acquired during the dissolution of the American Tobacco Company.

X-Q. 108. What name appeared on London Life as to makers?

A. "S. Anargyros".

1463 X-Q. 109. What is your present position?

A. I am head salesman.

X-Q. 110. What does your work consist of?

A. My work consists of assisting Mr. C. W. Burkley, who is also head salesman in charge of S. Anargyros cigarettes in Chicago territory, which takes in Cook County, Illinois, Lake County, Indiana and Lake County, Illinois.

X-Q. 111. What position did you hold here in Milwaukee?

1464 A. Head salesman in charge of the brands manufactured by the P. Lorillard Company which are under the supervision of what we call the S. Anargyros department.

X-Q. 112. What brands are those?

A. Murad, Egyptian Deities, Helmar, Mogul, Luxury, London Life and Turkish Trophies.

X-Q. 113. Whose name is on the packages of those cigarettes as to maker?

A. Well, it reads "S. Anargyros, capital stock owned by P. Lorillard Co."

X-Q. 114. Which of those names, S. Anargyros or P. Lorillard, appears more prominent on the package?

A. Well, the "S. Anargyros" on these particular brands appear in larger type.

X-Q. 115. Very much larger?

1465

A. Well, possibly twice the size, maybe two and a half times the size of "P. Lorillard Company".

X-Q. 116. When you glance at a package of these Murads, what name do you see as you glance casually at the package?

A. "S. Anargyros."

X-Q. 117. It is considerably larger than the name "P. Lorillard Co."?

A. Yes, possibly two or two and a half times the size of P. Lorillard Company.

X-Q. 118. When you look at it from five feet away you don't see the name "P. Lorillard Co." at all, do you? 1466

A. I see it, because I know just where it is.

X-Q. 119. But if you didn't know it was there, there wouldn't be much chance of your seeing it, would there?

A. That is a question, it all depends on how closely I would look.

X-Q. 120. In your sales effort do you offer these cigarettes as a S. Anargyros product?

A. Well, we offer them as a Lorillard product to the trade, but these brands, I believe, have been identified by the consumers of high-grade cigarettes as those formerly manufactured by the S. Anargyros brands which, I understand, and have always heard from consumers, predominates in high class cigarettes about in the same category as Tiffany in New York in diamonds. In fact, I have been in stores in territories strange to me, and I walked in and said, "I want a high-grade Turkish cigarette— 1467

By Mr. Johnson: I object to the latter part of this answer as entirely unresponsive to the question.

The Witness: (Continuing)—they invariably hand you a brand of those manufactured by Loril-

- 1468      lard Company and say, "Here is a Murad" or a Diety or Mogul, "which is one of the S. Anargyros products manufactured by the P. Lorillard Company."

X-Q. 121. Are you quoting the dealers when you say that?

A. Absolutely.

X-Q. 122. Did you ever hear a dealer say, "This is a package of Murad cigarettes made by the S. Anargyros Company which is owned by the P. Lorillard Company"?

- 1469      A. Absolutely.

X-Q. 123. Did you ever hear a customer ask for a Lorillard Murad?

A. Well, as a rule, let us assume he goes into a store, the ordinary consumer won't go in and say, "Give me Lorillard's Murads," he will say, "Give me a package of Murad cigarettes."

X-Q. 124. Is the name "Lorillard" featured at all on the package of cigarettes you mentioned?

A. Yes, it is on there and we feature it in our sales talk.

- 1470      X-Q. 125. Is the name "Lorillard" featured on any of those packages of cigarettes?

A. Yes, I would say it is, it is on there.

X-Q. 126. When you can't see it when you are five feet away from it, would you say the name "Lorillard" was featured on that package of Murads or on the package of any of those other brands when it is not on there big enough so you can see it when within five feet of it?

A. I would say it is featured on there, because the Lorillard name is on every package of these so-called S. Anargyros brand of cigarettes.

X-Q. 127. As a matter of fact, Mr. Goldstein, isn't

it the brand of the cigarette, Murad or Moguls or London Lifes, the people ask for? 1471

A. As a rule the ordinary consumer does, yes.

X-Q. 128. Isn't it the brand that sells the particular cigarette?

A. Sure, it is the trade name that sells it, but the average consumer that calls for that trade name knows it is a product of the Lorillard Tobacco Company.

X-Q. 129. How did the sales of the new product, Beech-Nut cigarettes, when they were first put on, compare with the volume of sales of the other brands you mentioned as having taken part in introducing?

A. Well, do you refer to the sales of Beech-Nut cigarettes in the territory I work? 1472

X-Q. 130. Yes, only in the territory you observed.

A. During the time I was here in charge of the campaign on Beech-Nut cigarettes I always classed them as fourth sellers.

X-Q. 131. What do you mean by that?

A. I mean by that the leading seller, first seller, was Camels, the second seller was Lucky Strike, the third seller was Chesterfields and the fourth seller was Beech-Nut cigarettes.

X-Q. 132. But, as compared with the other new brands of cigarettes put out by the Lorillard Company, did you find that the Beech-Nut cigarette sold more easily at the start than other brands you had put on first? 1473

A. No, I can't say that it did. I worked on a brand, Nebo cigarettes, the first brand Lorillard manufactured after the dissolution, and Nebos in six weeks from the time we put them on the Chicago market were the largest selling brand on the market at that time. So I cannot say Beech-Nut cigarettes outsold any of the other new brands.

X-Q. 133. Did any of these new brands that you took part in introducing, fail as a commercial brand?

1474 A. Well, I could not exactly say whether they failed. Most of these brands are still being manufactured and are scattered throughout the United States. In some places the sales are a little larger in volume than other places, but to my knowledge all of the so-called brands I have mentioned are still being manufactured by P. Lorillard Company.

X-Q. 134. None of them have been discontinued?

A. Not to my knowledge, no sir.

X-Q. 135. What was your district while you were stationed here at Milwaukee?

1475 A. Well, when I came to Milwaukee I took charge of the entire state of Wisconsin excluding the points around the extreme northern end, which was under the supervision of Minneapolis, Minnesota. During the Beech-Nut campaign my territory was confined to Milwaukee county, Waukesha County, Racine County and Kenosha County.

X-Q. 136. And was the rest of the state taken out from under your charge during the Beech-Nut campaign?

A. As far as Beech-Nut cigarettes were concerned, yes, sir, but I still had maintained my regular territory on the Turkish brands we manufactured.

1476 X-Q. 137. On all of the brands except Beech-Nut?

A. On all of the brands except Beech-Nut.

X-Q. 138. Then am I correct in understanding that for general purposes the whole state of Wisconsin is one district except the northern part which goes into the Minneapolis district?

A. Yes, sir, it did at that time, during 1921. Of course, I am unable to say whether it is managed that way now.

X-Q. 139. Was the state of Wisconsin sub-divided into smaller districts during the Beech-Nut cigarette campaign?

A. Well, you see there were during 1921 three head salesmen in the territory and that consisted of the tobacco department head salesman, the scrap department head salesman and the Turkish brand head salesman, and in order to get an immediate distribution the entire state was divided among us three. 1477

X-Q. 140. That is the usual state of Wisconsin district was divided into three parts?

A. Three territories.

X-Q. 141. For the purpose of the Beech-Nut campaign?

A. For the purpose of getting a thorough distribution as quick as possible. 1478

X-Q. 142. Was the Beech-Nut cigarette campaign started and continued during the same period of time in all three of the Wisconsin districts?

A. Yes, sir.

X-Q. 143. What, just in general, were the other two districts? That is, what parts of the state?

A. Well, I really couldn't tell you just exactly what counties they took in.

X-Q. 144. I didn't mean by counties, but as for instance the eastern part or western part, north of your district—

A. Well, I believe that the part north of Racine and Kenosha county was handled by Mr. Marks, who was a scrap man. 1479

X-Q. 145. Is that the district immediately north of Milwaukee, you mean?

A. I believe so, and his pivot point I think was Green Bay.

X-Q. 146. Green Bay then was in Mr. Marks' district?

A. I believe it was.

X-Q. 147. And Appleton?

A. No, I am not positive whether Appleton was in

1480 Mr. Marks' district, but I imagine it would have been, because when I was given my territory I was given my four counties and really paid no attention as to what the other men drew, as far as territories were concerned.

X-Q. 148. And Manitowoc?

A. Manitowoc, I think, was in Mr. Marks' territory.

X-Q. 149. And Sheboygan?

A. I believe that would go in his territory.

X-Q. 150. What else, in outline, was the other district?

1481 A. The other district, I believe, is what was called the western side of the state and that was held by Mr. Frank Hopewell. His pivot point, I believe, was Madison Wisconsin. That was the largest point in this territory.

X-Q. 151. What crews did you have in your district for this special Beech-Nut campaign—cigarette campaign?

A. You mean the amount of salesmen I had?

X-Q. 152. Yes.

A. There were five, including myself.

X-Q. 153. Was that all one crew?

1482 A. Yes, sir. I had three retail salesmen and one was working for Mr. Frank Hopewell, formerly in the Milwaukee territory, was put under my supervision at the time.

X-Q. 154. Did you have any other crews beside these four men and yourself, working under you?

A. During the Beech-Nut campaign?

X-Q. 155. During the special introductory campaign of the Beech-Nut cigarettes.

A. No, sir.

X-Q. 156. Did you have the same four men right through the campaign?

A. Well, there was one man resigned, prior to the termination of the campaign, and I continued with three retail salesmen.

X-Q. 157. Will you give me the names of these four men, please? 1483

A. They were a Mr. Gimbel—

X-Q. 158. Do you know his initials?

A. E. A. Gimbel, and W. C. Jackson and a Mr. William New—he was with me a short time, and a Mr. M. J. Schimmel.

X-Q. 159. Taking Mr. Gimbel, of these four men you have just named, do you know how long he had been with the Lorillard Company before that?

A. Well, when I acquired the Milwaukee territory I had no memorandums turned over to me as to the exact date of his employment, but I understand he was with our company about four or five years. 1484

X-Q. 160. He was an experienced man then in your company's employ?

A. Yes, sir.

X-Q. 161. Do you know where he is now?

A. I couldn't say. I haven't been in touch with him since I have left this territory.

X-Q. 162. Is he still in the employ of the P. Lorillard Company?

A. No, sir, he left our employ since, and I couldn't tell you where he is located.

X-Q. 163. W. C. Jackson, was he with the Lorillard Company before that? 1485

A. I understand about a year and a half.

X-Q. 164. In what territory immediately before that, do you know?

A. I believe he had been, ever since his employment with the company in the Wisconsin territory.

X-Q. 165. Do you know what territory Mr. Gimbel had been in immediately before that campaign?

A. In the Wisconsin territory also.

X-Q. 166. Is Mr. Jackson still in the employ of the P. Lorillard Company?



1486 A. No, sir.

X-Q. 167. Do you know where he is now?

A. I couldn't say.

X-Q. 168. Mr. New, do you know whether he was with the P. Lorillard Company before that campaign?

A. No, sir, I employed Mr. New about two weeks prior to the introductory campaign on Beech-Nut cigarettes.

X-Q. 169. About two weeks before?

A. About two weeks prior to that.

X-Q. 170. Was he a tobacco man?

A. No, he was hired to work Helmar cigarettes.

1487 X-Q. 171. I mean, had he had previous experience in the tobacco trade?

A. From the information I was able to get from him and some of the references he had gotten for me prior to his employment, he had selling experience, but no tobacco experience.

X-Q. 172. Is he still with the P. Lorillard Company?

A. No, sir, he resigned about seven weeks, I believe, after the date he was employed.

X-Q. 173. Why did he resign?

1488 A. He went into the railroad game. He formerly was selling and soliciting freight business for some railroad and I understood he was going back into that business.

X-Q. 174. Did you have the hiring and firing of these men, this crew?

A. Why, yes. We pick our prospects, line up their references, send in what we call their employment papers regular form to fill out, and request our New York office to grant us permission to employ whatever particular prospect it may be, and if their references we have mailed in meet with the approval of our superiors they usually wire or write us, "It is O. K. to employ Mr. So-and-so."

X-Q. 175. Did you request Mr. New to resign?

1489

A. No, sir, he resigned of his own accord.

X-Q. 176. Had there been any complaint or dissatisfaction with his work while he was with you?

A. Absolutely none.

X-Q. 177. Had Mr. Schimmel previously been with the P. Lorillard Company before this campaign?

A. Yes, I believe he was with them about nine months.

X-Q. 178. In what territory?

A. In the Milwaukee territory.

X-Q. 179. Was he an experienced man in the tobacco trade?

A. Yes, sir.

1490

X-Q. 180. Is he still with the P. Lorillard Company?

A. Yes, he is working under the supervision of Mr. Frank Hopewell.

X-Q. 181. Which one of these four is the one that you say you took over from Mr. Hopewell's previous district?

A. Mr. Schimmel.

X-Q. 182. During the course of your campaign did you have any other men under you for the Lorillard Company at all?

A. No, sir.

X-Q. 183. Not even temporarily?

1491

A. No, sir. There was a window man here who worked under the supervision of Mr. Frank Hopewell in the window trimming department, Mr. Smith, but he was not working under my supervision, but he had assisted me in putting in our regular window trims.

X-Q. 184. What were Mr. Smith's initials?

A. I can't say just exactly what his initials were because he never worked under my supervision, but I always addressed him as "Mr. Smith" and he addressed me as "Mr. Goldstein".

X-Q. 185. In working your district, Mr. Goldstein,

1492 how did you assign these four men that you have just named?

A. There was not any particular territory assigned to any of the men, due to the fact we wanted to get our distribution as quickly as possible I thought it was essential to cover the main thoroughfares of the city first and I worked car-line streets only and routed the men daily. I started them from the central part of the city, commenced on a car-line and worked out to the end.

X-Q. 186. The same man go pretty much all the way out on one car-line?

1493 A. Yes, if it happened to be Fond du Lac Avenue the same man would work Fond du Lac Avenue, but possibly the next day he would be working another end of the city.

X-Q. 187. Could you tell me just in outline just what principal car-lines Mr. Gimbel worked?

A. Well, he had worked Third Street, he had worked Center, he worked Grand, he worked Wisconsin, and such other small branch lines as lead off of these streets.

X-Q. 188. Can you name, just in outline, what car-lines Mr. Jackson worked?

A. Well, he had worked Center.

1494 X-Q. 189. That is a different Center from the one Mr. Gimbel worked?

A. There is one west and one east.

X-Q. 190. Well, which, do you remember?

A. Mr. Jackson worked west. He had worked Oakland, East Water, West Water and also worked Third Street.

X-Q. 191. Is that the same Third that Mr. Gimbel worked?

A. Yes, sir. He also had worked Fond du Lac Avenue.

X-Q. 192. Which end of the Third Street car route was Mr. Jackson on?

A. He commenced on Grand Avenue and worked north. 1495

X-Q. 193. And was Mr. Gimbel on Third Street south?

A. Well, he had worked Third Street south, but the streets over there are very much cut up. He started at Grand Avenue and worked south and then he would cut off into possibly Mitchell and Eighth. I have been away from here now a year, but in my work on Anargyros cigarettes I personally covered very little of the outlying sections.

X-Q. 194. You didn't go out very much into the outlying sections?

A. Very, very seldom. 1496

X-Q. 195. About what percentage of your trade was in the outlying sections, roughly?

A. You mean, cigarette dealers?

X-Q. 196. Yes.

A. Well, on Beech-Nut cigarettes I would judge possibly—on domestic cigarettes of the character of Beech-Nuts I would judge possibly sixty-five per cent.

X-Q. 197. About sixty-five per cent. of the dealers were in the outlying districts?

A. On the Anargyros brands possibly about from twenty-five to thirty per cent.

X-Q. 198. Just quickly in outline can you give the car routes Mr. New worked? 1497

A. He had worked all car-lines practically on the south side of the city. I could not just name them. I know one of the principal ones was Mitchell Street.

X-Q. 199. He worked on routes these other men worked on also, did he?

A. He had also re-worked Third Street and had re-worked Walnut Street and Fond du Lac. They were pretty much scattered around, you know, changed around.

X-Q. 200. Walnut, did you say?

1498 A. Yes, sir.

X-Q. 201. And Mr. Schimmel, just briefly?

A. Mr. Schimmel had a Ford car and due to that fact I assigned him to working all of the outlying sections off of Street cars commencing on the northwest side and his time was taken up considerably in helping me transfer around cigarettes to jobbers and placing up outdoor advertising in the immediate loop.

X-Q. 202. He had the outlying districts beyond the car-lines, you say, in general?

A. Yes, that is when he was not working with me.

1499 X-Q. 203. Did you ever have any complaints in respect to any of these four men in your crew, as to the way they were presenting Beech-Nut cigarettes to the dealers?

A. How do you mean? From retail dealers or jobbers?

X-Q. 204. From anybody.

A. Never.

X-Q. 205. Did you ever have to caution them as to their methods?

1500 A. Well, no, I never had to caution them because I had at different times during the campaign joint dealings with them which we call schooling meetings, and brought out just how I wanted them to approach the retail dealers and how I wished them to approach the consumer, and by checking up their work I found my instructions were followed out very closely.

X-Q. 206. Did you ever have any complaints as to the work of Mr. Gimbel?

A. Never.

X-Q. 207. As to the way he was offering these Beech-Nut cigarettes to the dealer?

A. Never.

X-Q. 208. Found no fault at all?

A. No, sir, he was a very thorough man.

X-Q. 209. Did you have any complaints in regard to Mr. Jackson? 1501

A. None, whatsoever.

X-Q. 210. Did you ever have to warn Mr. Jackson?

A. No, sir.

X-Q. 211. In regard to his methods of selling Beech-Nut cigarettes?

A. No, sir.

X-Q. 212. Did you ever have any complaints in regard to Mr. New?

A. No, sir.

X-Q. 213. Did you ever have to warn Mr. New?

A. No, sir.

1502

X-Q. 214. Did you ever have any complaints in regard to Mr. Schimmel?

A. No, sir.

X-Q. 215. Did you ever have to warn Mr. Schimmel?

A. No, sir.

X-Q. 216. Did the P. Lorillard Company ever send you any instructions to instruct the salesmen not to put forward these Beech-Nut cigarettes as a product of the gum people?

A. Well, I had received a letter—the only instructions, what I might call instructions were prior to the opening of this campaign, I was called to Chicago, my letter was signed by my general sales manager in charge of the Turkish cigarette department, Mr. C. C. Auld to meet a Mr. E. J. Bush in Chicago. 1503

X-Q. 217. When was this?

A. This was prior to September 26th, 1921.

X-Q. 218. What was Mr. Auld's position?

A. At that time general sales manager of the Turkish department.

X-Q. 219. Was he manager of the Turkish sales in Chicago?

1504 A. No, throughout the United State, from what I understand.

X-Q. 220. Will you please tell what took place at that meeting, in regard to instructions?

1505 A. I went over there and met Mr. E. J. Bush and a Mr. Fitzsimmons who had charge of the Beech-Nut scrap business and a Mr. Everett Meyer who had charge of the tobacco department for the central western states and at this meeting we were allotted our respective territories we were to cover on Beech-Nut cigarettes and all of the head salesmen present at this meeting were given a sales talk, and our attention was particularly  
1506 called to the fact that in marketing Beech-Nut cigarettes we should not meet with any trouble because we had such wonderful brands as Beech-Nut scrap to call to the retailer's attention that we were the manufacturers of, that had made such tremendous success and we had such brands as Murad, Egyptian Dieties, Helmars and Moguls, they were the leaders in their respective class, and in mentioning these brands to the retail dealers, we would no doubt get a quicker co-operation from them. The entire talk was along those lines, explaining how they wanted us to sample, how they wanted the advertising to be placed, and that just about terminated our campaign. Of course, the meeting lasted practically all morning, but the entire meeting was based on those lines.

X-Q. 221. Do you remember the date of that meeting?

A. I believe it was about three days prior to the time we had opened up our campaign in Wisconsin.

X-Q. 222. Did you receive a letter from P. Lorillard Company calling that meeting?

A. Just as I have mentioned, I received a letter from our general sales manager advising me to meet Mr. E. A. Bush in Chicago, and mentioning a certain date, and to be guided by any instructions he might give me, which was the customary way of the company doing business.

X-Q. 223. Did you ever receive from the P. Lorillard Company written instructions for yourself or to be relayed to your salesmen as to the way you should present these cigarettes to the market and to refrain from letting the idea be given that they were put out by the gum people? 1507

A. I never received any written instructions, because I imagine the company didn't think it necessary.

X-Q. 224. Did you at any time receive a written or printed letter or circular giving you such instructions or warning to be careful in that regard?

A. No, sir.

X-Q. 225. You have never at any time received such a letter or circular? 1508

A. No, sir.

X-Q. 226. Did you ever write or issue a circular letter warning your salesmen?

A. No, sir. At these meetings that I had with my salesmen everything was done in person, because I was right here with them all of the time and I called their attention to the way I wanted them to present Beech-Nut cigarettes in the trade. I instructed them that in introducing themselves to the trade I wanted them to make it clearly understood to the retailer that they were representatives of P. Lorillard Company who manufactured Beech-Nut scrap tobacco and such other brands as Murads, Egyptian Dieties, and Helmar and also Mogul and then tell them, "We are now putting on a new brand of cigarettes called Beech-Nut cigarettes, which is the latest addition to the numerous trade marks we already have on the market." 1509

X-Q. 227. Do you ever receive circular letters from the P. Lorillard Company?

A. Yes, I received circular letters in regards to different methods of sampling, or maybe received a circular from the general sales manager telling us what he had



1510 seen in other territories that would be beneficial in promoting larger sales on our products.

X-Q. 228. You have been, you say, ten or eleven years with the P. Lorillard Company. From your experience with that company, isn't it usual for them to send such a circular or letter in regard to anything which they want to impress upon their salesmen?

A. As I say, if they had something they wanted to impress upon us in regard to new methods of working or new methods of sampling or advertising they would write us about it and send us out a regular circular letter, or possibly a circular letter from the sales  
1511 manager requesting us to read such letter to our retail salesman.

X-Q. 229. If the general sales manager of the P. Lorillard Company or any branch of the Home Office had wished to impress these instructions upon you, wouldn't you have expected some letter or circular on it?

By Mr. Cavanagh: That question is objected to, as the witness is not competent to answer this. He is not supposed to know what is in the minds of the officials of the Lorillard Company as to what they regard as important.  
1512

(Last question read to the witness).

A. Well, in this particular case I would not because the company—

By Mr. Johnson:

X-Q. 230. Just in general.

A. As I say, in general I would not expect instructions of this kind because the company knows that the men in their employment in charge of territories are

well acquainted with the products of the Lorillard Company, and we all know that Beech-Nut scrap is one of our famous trade mark brands and that naturally they would not be sending us instructions telling us we should not mention anybody else's product with them. I imagine if the company had to send me instructions of that kind they would immediately dispense with my services. 1513

X-Q. 231. About how often, Mr. Goldstein, did you hold these meetings of your salesmen in your district?

A. Well, incidentally these instructions were given to them practically from day to day or every other day. These instructions were given to them practically continuously. 1514

X-Q. 232. You spoke of having meetings at which you gave instructions.

A. The instruction meetings I referred to are little meetings held prior to the time the men started out to work in the morning.

X-Q. 233. Then these meetings you speak of for the purpose of giving instructions were informal times when you came together in the morning before beginning your day's work?

A. Yes, sir.

X-Q. 234. You said on direct examination, I believe, that at these meetings you specially told the salesmen that the Beech-Nut cigarettes were a Lorillard product; is that right? 1515

A. Yes, sir.

X-Q. 235. Now, why was that necessary to tell four Lorillard salesmen that one of the products which your company was putting out was their own product?

A. Well, we not only do that with Beech-Nuts, we do it with all brands. We go to a retail dealer we naturally call attention to the fact it is a Lorillard

- 1516 product to bring attention to which manufacturer is producing the cigarettes.

X-Q. 236. This is the salesmen you said you were talking to?

A. These instructions were relayed to them so they in turn could relay the information to the retail dealers. As I said in that direct examination, I had read in the newspapers and also in the tobacco journal there was some sort of case going on on the question of trade marks, and I didn't want any possibility of confusion in my territory, and I took it upon myself to enlighten the men, figuring possibly they might run across some

- 1517 dealer who, when they first mentioned Beech-Nut to him might say, "Who made this, the Beech-Nut Packing Company?" I wanted to avoid all of that and therefore gave them their instructions.

X-Q. 237. As I understood you to say, you specially told your salesmen that the Beech-Nut cigarettes were a Lorillard product. Did you think that even your own salesmen were in uncertainty as to the origin of these cigarettes?

- 1518 A. Absolutely not, because my salesmen that worked for me prior to this campaign had heard of Beech-Nut cigarettes and the success they were meeting with in the east and the numerous requests they had had from retail dealers as to when they would be able to get them. They knew it was a product of the Lorillard Company, and the reason I had given these instructions was to avoid any possibility of confusion.

X-Q. 238. Had you found some confusion?

A. Absolutely none.

X-Q. 239. Then isn't it peculiar you should have thought it necessary every day to repeat these instructions, when you found no confusion at all out in the trade?

A. These instructions were only given to them as

to Beech-Nuts, but instructions were given to them it was a product of the Lorillard Company, that was done in order to impress on the retail dealer that we were the manufacturers of successful brands and therefore wanted to bring out the fact we were again making a new brand of cigarette and to impress on the retail dealer it was a Lorillard brand.

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X-Q. 240. As you have gone about in your day's work during the weeks of this Beech-Nut cigarette campaign did you have any questions asked you as to who made the Beech-Nut cigarettes?

A. Well, I never had a consumer or retailer ask me that question because when I personally approached a retailer or wholesaler I made it understood at the start that I was representing Lorillard Company, manufacturers of Beech-Nut tobacco and cigarettes. Only in one case I stopped a consumer who I had seen smoking a cigarette and as usual I would walk up to any man, possibly yourself if I saw you on the street smoking a cigarette, I would say, "Pardon me, I notice you indulge in cigarettes and I would like very much to present you with a package of cigarettes manufactured by the P. Lorillard Company", and this man stopped and he said, "I wouldn't smoke that cigarette manufactured by people who have to resort to burglary." And I said, "You are all wrong on that, where did you get that information?" He said, "I have a friend of mine who sells Beech-Nut gum and he told me that." I said, "I am telling you he is all wrong, I would like to get his name and I would like to have a meeting with him and possibly yourself." I said, "We have manufactured Beech-Nut scrap for a great number of years, to my knowledge, and the gentleman that told you that has absolutely told you something false that would hurt the prospect of the promotion of this brand." "Nevertheless", I said, "I wouldn't like to have you feel that way about it, I would

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1521

1522 like to have you accept this package of cigarettes and give them a good trial, you will find them a very fine quality of cigarette." That was the only case I had ever had where a man mentioned Beech-Nut gum or Beech-Nut products to me.

X-Q. 241. Is that the way you approached Mr. E. R. Lewis and his friend who was with him the day you have told about in your direct examination in the Loop Cigar Store?

A. I did not approach Mr. Lewis—I was introduced to Mr. Lewis.

1523 X-Q. 242. Well, did you open up with similar remarks that you say you used to every one that you met, "I am a Lorillard man"—

A. No, I didn't say I was a Lorillard man, I said I represent the Lorillard Company, manufacturers of these cigarettes. When I met Mr. Lewis I was introduced to him by Mr. Tuckwell as a Lorillard representative and there was not any necessity of my telling him that, he knew that, and I was told he was the Beech-Nut Packing Company man.

1524 X-Q. 243. To go back to these instructions, I understood you to say on your direct examination that you told your salesmen that these Beech-Nut cigarettes were of a high quality and emphasized to them the quality of the cigarette, is that correct?

A. You mean, our salesmen?

X-Q. 244. Yes, in your meetings that you have described.

A. Well, I told them the Beech-Nut cigarettes were a very high quality domestic cigarette.

X-Q. 245. Now, are you familiar in general with the Beech-Nut Packing Company products?

A. None other than the fact I know they manufacture Beech-Nut bacon and Beech-Nut gum.

X-Q. 246. Have you seen their products in stores at different places?

A. Well, in the character of stores I call on I don't see any Beech-Nut bacon, but I do see Beech-Nut gum. 1525

X-Q. 247. Have you seen their advertising in magazines and posters and bill boards and such?

A. I read very little magazines, therefore have never noticed any advertising. As far as bill boards, I have never seen a Beech-Nut bill board. I have seen little ads, and window displays which I would call window screens, set up by the salesman who worked the territory.

X-Q. 248. You have seen considerable Beech-Nut Packing Company advertising, haven't you?

A. These screens I mention, which I believe carried a picture of their factory or their different machineries they manufacture with. I have never taken pains enough to see what the ad represented, but I knew it was a Beech-Nut ad. 1526

X-Q. 249. You get about a great deal, don't you, Mr. Goldstein?

A. In cigar stores only.

X-Q. 250. But you have to get about from store to store, don't you?

A. Absolutely.

X-Q. 251. You must pass a great many sign boards?

A. I do.

X-Q. 252. A great many windows? 1527

A. I do.

X-Q. 253. And is it possible for you to say you haven't seen any great amount of Beech-Nut Packing Company's advertising?

A. I say I have seen Beech-Nut screens, but I don't ever recollect seeing a Beech-Nut bill board.

X-Q. 254. You know that the key word of all Beech-Nut Company's advertising is quality of the goods?

By Mr. Cavanagh: That question is objected to as being improper cross-examination, as nothing was

1528        said about the quality of Beech-Nut goods or their standing, on direct examination, and furthermore this witness is absolutely not competent to answer any such questions.

          The Witness: No, sir, I can't say that I do. I have never had any occasion to hear that and I never met any Beech-Nut representative outside of the fact I met Mr. Lewis and during that conversation he never mentioned to me their trade name or mark was "quality".

          X-Q. 255. Didn't you know when you emphasized to  
1529 your salesmen the word "quality" in connection with these Beech-Nut cigarettes, you were putting in their hands the very material for connecting this product up with the Beech-Nut Packing Company?

          By Mr. Cavanagh: That question is objected to as absolutely improper. There is nothing in the record to show that this Beech-Nut Packing Company is the possessor and sole owner of the common, every day, wholesome English word "quality" for food products, chewing gum or what not, let alone tobacco.

1530        Mr. Johnson: Answer the question, please.

          A. No, sir, I didn't know that I was using any of their words that they may control or phrases they may control, as I had used the word "quality" in practically every brand I sample. When I sample Murads I bring out the point very clear, "Murad cigarettes contain the highest quality of Turkish tobacco on the market", and I have used that word ever since I have been in the cigarette business.

          Adjournment Taken to 2:00 o'clock p. m. this day.

January 30th, 1923, 2:00 p. m.

Met pursuant to adjournment, parties appearing as before.

WILLIAM GOLDSTEIN resumes the stand for further cross-examination.

By Mr. Johnson:

X-Q. 256. I understood, Mr. Goldstein, on your direct examination, that you told your salesman from time to time to put these cartons of Beech-Nut cigarettes on the shelves in stores. Did you caution them at that time to avoid having them put right alongside the Beech-Nut Packing Company's product in the same store? 1532

A. They were not told to put them on a shelf. My instructions to them were to get the dealer, after he succeeded in selling a carton or two for cash,—if possible to get the retail dealer to put them on the cigar case, which is the first place the consumer coming in the store would be likely to see the brand.

X-Q. 257. Don't your salesmen place these things in stores that keep general lines of goods as well as cigar stores only? 1533

A. Oh, yes, if they just happen to run across possibly a stationery store or grocery store that may happen to handle cigarettes, but as a rule a cigarette salesman is not going around calling on grocery stores or other lines of merchants that carry cigarettes outside of drug stores or cigar stores or confectionery shops or soft drink parlors, just look for cigarette dealers in places that do business of that kind.

X-Q. 258. Haven't you found dealers of cigarettes in the small towns or the general stores?



1534 A. Yes, in the smaller towns, but I personally have had little dealings in the smaller towns for the reason I have always worked the Anargyros brand of cigarettes, with the exception of the special campaign.

X-Q. 259. The Beech-Nut cigarette being a cheaper cigarette, did you not expect they would be carried by a greater variety of stores?

A. Absolutely.

X1Q. 260. Did you ever caution your salesmen about that, having them placed alongside of the Beech-Nut Packing Company products?

1535 A. I don't recall ever mentioning in my conversation to any salesman the Beech-Nut products, outside of the fact when I talked to them I said, "The reason I want you folks to mention particularly Lorillard Company and Beech-Nut scrap and other brands, I do not want any confusion about the Beech-Nut name or some other article made under the Beech-Nut label."

X-Q. 261. Were you able to go with your salesmen in very many cases to see how they carried out your instructions?

1536 A. At times when I got a little time away from calling on my jobbers and downtown dealers I spent a little time with them but mostly I went around and checked over their work from their daily reports.

X-Q. 262. Could you say about what percentage of cases you were able to watch what your salesmen were actually doing?

A. Well, possibly in twenty per cent of the sales they made.

X-Q. 263. Do you mean that you went with them in about twenty per cent of the visits?

A. No, not with them, but about twenty per cent of the merchants they had sold cigarettes to, twenty per cent of the most important merchants I had gone around later on and inquired as to the success of the brand, and

to look around to see how they had placed the advertising material. 1537

X-Q. 264. But in what portion of the cases were you able to go in with the salesmen?

A. Oh, very small, about possibly five per cent of the dealers they called on.

X-Q. 265. Then have you any means of knowing what your salesman said or did when he went into these stores to place Beech-Nut cigarettes?

A. Only in the places where I personally was in the store when they called on the retail dealer.

X-Q. 266. You had very little means of knowing then what the salesman had actually said or done at those times? 1538

A. Yes, I had means of knowing. When I called on the retail dealer my remarks were as a rule along this line. I would go in there and introduce myself as Mr. Goldstein, the representative of the Lorillard Company, and, "I am interested in the marketing of this brand and looking after the interests of the Beech-Nut cigarettes and I came in to find out whether you carried this brand on hand." And he said, "Yes", and I said, "Did my salesman place advertising material here?" or "I don't see any around." The chances are in placing up material the retail dealer will jerk down the advertising matter after the retail salesman leaves, so to make sure whether he has any on his report I would inquire to that effect, but as a rule if a salesman did anything out of the ordinary, that the retail dealer would not expect a salesman to do, he would naturally tell me about it. 1539

X-Q. 267. Didn't you hear any inquiries from any of these dealers of any kind, on their part, as to whether the Beech-Nut Gum people were putting out these cigarettes?

A. Never.

X-Q. 268. But is it not true that you had very little opportunity yourself to observe what your salesmen said

1540 and did when they went in to make sales of the Beech-Nut cigarettes?

A. Only in the places I was with them.

X-Q. 269. Is that not true, you had very little opportunity yourself to observe what your salesman said or did?

A. I have considerable opportunity in the places I was with them and where I had inquired in regard to their work and how they had conducted their work.

1541 X-Q. 270. But when you only went with them in perhaps five per cent as you have said, of their visits, you yourself had very little opportunity, did you not, for observing what they said and did at those times?

A. Yes, but I could judge from that five per cent when I worked with my salesmen in the most important sales of my territory, and when I judged that five per cent I could almost figure out exactly how they had conducted their work and duties in the remaining ninety-five per cent.

X-Q. 271. But how can you know what the salesman said or did at that time if you were not there?

1542 A. Well, it has always been the policy with our company to train our salesmen to do their work and conduct the business along the lines laid out by the company and their head salesman. We have always felt if the salesman is properly trained by the head salesman, in ninety-nine per cent of the cases he conducts his work along that line.

X-Q. 272. Did you ever accompany this salesman, W. C. Jackson, you have mentioned, on any of his visits?

A. Did I ever accompany Mr. Jackson?

X-Q. 273. Yes.

A. Yes, I have.

X-Q. 274. Do you know the C. H. Beese grocery store at 701 Murray Avenue?

A. Just know of them, only within the last week or

ten days. I went out to see what character of store it was, but Mr. Beese is not in there any more. 1543

X-Q. 275. What was the reason for your going out there?

A. Well, I just went out to see whether that particular dealer was located on any of the routes I had worked my salesmen on.

X-Q. 276. What did you find in that respect?

A. I found I never routed a salesman to work that part of Murray Avenue. The store does not directly face a car-line, and a salesman who works that territory was not to work that particular store.

X-Q. 277. What car-line is that on?

1544

A. The side of the building facing on Folsom, if I am not mistaken, and the front of the building facing directly on Murray Avenue which hasn't a car-line and if the salesman was over there he was off his route.

X-Q. 278. What car-line route in general, as you have outlined them, is that on?

A. The closest to that particular store?

X-Q. 279. Yes.

A. Oakland Avenue.

X-Q. 280. Did your man, Mr. Jackson, ever visit that store?

A. Not to my knowledge, he has not.

1545

X-Q. 281. Have you looked into that on your records?

A. On my records? Well, I wouldn't have any means of knowing on my records, the only way I would know is from the routes I had given him, unless he had gotten off his territory. Possibly he had, but if he stuck to his territory and was not loafing on the job, he was not there. I know we had never sold that gentleman any cigarettes and it is most likely he was not in there, because the dealer from the information I got from the dealer out there, Mr. Beese did not carry any cigarettes or tobacco products.

1546 X-Q. 282. But that is on the Oakland Avenue car-line, didn't you say?

A. No, it is not on the Oakland Avenue car-line. It is a block from the car-line street, Oakland Avenue, or whatever street it is, is a block west of there—or north of there.

X-Q. 283. It is in the territory of the Oakland Avenue car-line?

A. It is in the vicinity, but a salesman may be routed to work East Water Street and cross East Water, say from Sycamore to Grand and not touch any of the corner stores on Grand Avenue, but adhere strictly to Third Street or East Water Street.

1547 X-Q. 284. When you say, Mr. Goldstein, on your direct examination, that your salesman would do this and would do that, how could you possibly know that your salesman certainly did such things as you said?

A. The reason I take it for granted they did, is because of the continuous checking I did, which was one of the most important duties in my work, checking my salesmen up to see if they are following out my instructions. If they were not, I would have dispensed with their services.

X-Q. 285. You did take it for granted?

1548 A. Absolutely, because I never found any of my salesmen doing otherwise.

X-Q. 286. It was a mere guess on your part?

A. No, it was no guess at all, absolute positive checking from records of what they do, and inquiring from different people they come in contact with.

By Mr. Johnson: This last answer is objected to, except the first sentence, as not responsive.

X-Q. 287. You introduced some order slips, Mr. Goldstein. Were these always issued when your salesman made a sale of Beech-Nut cigarettes?

A. When they made a cash sale they left the retail dealer what is known as the white slip, which I consider the original, and he brought the duplicate attached to his duplicate daily report for my records and kept a tissue-paper copy for his records. And when he sold through a jobber he brought me back the original to turn in to the jobber for delivery and left the retailer the duplicate yellow slip to show that the retail dealer had purchased the goods and signed for them, and the white slip he brought back attached to his daily report for my records.

1892

X-Q. 288. Did your salesmen always issue these order slips?

1892

A. Absolutely.

X-Q. 289. Did you ever have any trouble with them about their failing to do that?

A. Not to my recollection.

X-Q. 290. Do tobacco jobbers have order slips of a similar character to that, with their own name at the top?

A. You mean similar to?

X-Q. 291. Yes.

A. No, I don't recollect any jobber having forms of this kind. They usually have a large bill head.

X-Q. 292. But of the same character?

1892

A. No, I don't think so. In fact, I have never seen one.

X-Q. 293. Did the Lorillard Company or your department organize any daily or weekly or monthly competitions among your salesmen to induce increased sales or make an offer to the man who would make the most sales in a given period?

A. Not in my territory, no, sir.

X-Q. 294. Have you heard of that being done in connection with those Buck-Nut cigarettes?

1552 A. I heard indirectly, with other salesmen, there were other salesmen that worked competitive districts like that.

X-Q. 295. Was there any of that in the state of Wisconsin?

A. I couldn't say.

X-Q. 296. Were any other kinds of inducements or bonuses offered to your salesmen or to your jobbers' salesmen?

1553 A. Yes, the jobbers' salesmen and the jobber received a circular letter telling that from September the 26th up until some time in November he would receive twenty-five cents a thousand on each thousand Beech-Nut cigarettes sold to the retail dealer, and my salesmen and myself were offered a bonus on all of the introductory business we had obtained on Beech-Nut cigarettes.

X-Q. 297. Have you a copy of that circular you speak of?

A. No, I have not. All my correspondence that transpired between the company and myself was destroyed when I left Milwaukee, Wisconsin, as I didn't want to carry all of this stuff along. It was really unimportant and I destroyed it upon leaving Milwaukee

1554 for Chicago.

X-Q. 298. Can you tell me if it was similar to some circulars that are now on exhibit in this case?

Mr. Cavanagh: That question is objected to as improper cross-examination, as this witness did not testify on direct as to anything in connection with these circulars. Counsel for Lorillard Company is willing to allow all latitude of cross examination, but sees no sense in going so far afield.

By Mr. Johnson: This witness was avowedly put on to explain the methods of distribution of the Lorillard products.

By Mr. Cavanagh: Witness was put on to explain the method of introducing the matter to the trade, not any question between the Lorillard Company and salesmen on any bonus proposition, if that is what Mr. Johnson is after. 1555

By Mr. Johnson:

X-Q. 299. I show you three circular letters marked Plaintiff's Exhibit #12-A, #12-B and #12-C. Will you tell me whether the circular which was sent to jobber salesmen in this district were similar to this, just in general. 1556

A. (Witness looking at same) I don't recollect this circular (referring to Exhibit 12-C) ever being mailed to any particular jobbers in this state. This (referring to Exhibit 12-A) is a similar circular; was mailed advising the jobbers in the state of Wisconsin Beech-Nut cigarettes were being introduced and making a blanket offer. This is the exhibit here (indicating).

X-Q. 300. Plaintiff's Exhibit 12-A?

A. Yes, but the dates were different on that.

X-Q. 301. Did the circulars that came into this district of this character, offering this additional compensation to the salesmen for selling Beech-Nut cigarettes, contain any warning to the salesmen not to take any chances in having the Beech-Nut cigarettes put forward as a product of the Beech-Nut Packing Company? 1557

A. Well, the circular, to my recollection, spoke of nothing else but Lorillard's Beech-Nut cigarettes and what they requested of the jobbers or wished jobbers to do for them in helping market Beech-Nut cigarettes, the only instruction I recollect put on there was not to sell any one dealer any big quantity, I would suggest not over five thousand, which was in order to keep the merchandise fresh in the dealer's stock.



1558 X-Q. 302. Then, do I understand you that this special inducement to increase sales was made without any warning being issued at the same time of the danger of confusion among the consuming public?

A. Well, this circular did not go to the jobber salesmen, it just went to the jobber and the jobber in turn—Lorillard has no connection in the course of their business with the jobber salesmen—

By Mr. Johnson: Objection to this as not responsive.

(Last question read).

1559

A. There was not any warning of confusion or anything given in the circular.

X-Q. 303. In your direct examination, Mr. Goldstein, you told about meeting Mr. E. R. Lewis of the Beech-Nut Packing Company. Will you please state again the first time you ever met him?

1560 A. The first time I met him, Mr. Lewis, was some time after September 26th, shortly after we opened up the campaign, in a store known as the Loop Smoke Shop, which is on East Water Street, near Wisconsin, and to my knowledge Mr. Lewis and another gentleman, that I was not interested in until later on, were in this store when I came in, I should judge about nine o'clock in the morning.

X-Q. 304. Were you introduced to the other gentleman?

A. No, sir.

X-Q. 305. Not at all?

A. Not at all.

X-Q. 306. Did you talk to the other gentleman?

A. No, sir, our conversation was purely and only with Mr. Lewis.

X-Q. 307. Do you remember what the other gentleman looked like?

A. Well, I didn't take any particular pains to find out. I was more or less in a hurry and had an appointment with jobbers and had a very brief conversation with Mr. Lewis, and the fact Mr. Lewis didn't make any attempt or Mr. Tuckwell did not make any attempt to introduce me to him, I didn't pay any particular attention to him. 1561

X-Q. 308. Do you remember seeing Mr. Lewis before at any time?

A. Not to my knowledge, I don't. I possibly saw him, but didn't know the gentleman.

X-Q. 309. Didn't you and he visit the same trade, to a great extent?

A. Well, yes, I imagine we do, because practically every cigar store carries the candy and the gum that he sells, but I don't ever recollect running across him in any of the stores until this particular time I was introduced to him. 1562

X-Q. 310. But you and he were practically running in and out of the same offices a great deal?

A. The same dealers?

X-Q. 311. Yes.

A. That may have been, I couldn't say, but I don't ever recollect noticing him.

X-Q. 312. It is quite possible he may have noticed you even if you didn't notice him? 1563

A. That may be. Lots of people may have noticed me that I don't know. I couldn't account for the things he sees.

X-Q. 313. He might even have said, "Hello," to you a great many of times without you remembering it?

A. I don't recall it, because any man saying "Hello" to me, I would try to find out who he was or at least I would make some remark to him, such as, "You look familiar to me, but I can't just place you," or something like that, to find out whether he recognizes me.

1564 X-Q. 314. What was the next meeting that you remember between yourself and Mr. Lewis?

A. The next meeting was in the store known as Kerns & Sons cigar store, directly across from the Loop Smoke Shop.

X-Q. 315. When was that?

A. Oh, I should judge possibly sometime during the month or the early part of October. I can't just say the exact date, because I had no object at that time to remember the dates of meeting him. Just a casual meeting in the store.

1565 X-Q. 316. Do you remember definitely which of those meetings came first?

A. The meeting where I was first introduced to him in the Loop Cigar Store, by Charles Tuckwell.

X-Q. 317. Are you sure of that?

A. Absolutely.

X-Q. 318. When was the other meeting you mentioned at Beck & Mahlsted's?

A. That was sometime, I should judge, the latter part of October in a city known as Kenosha, Wisconsin.

X-Q. 319. Can you think of any other circumstance that enables you to fix the date?

1536 A. No, I could not. I was running in and out of Kenosha practically three or four times a week, in between Milwaukee, Kenosha and Racine. Those were the three largest points I had to work and I was running in and out of there right along.

X-Q. 320. That time you went to Chicago to the meeting called by Mr. Bush, was it?

A. The first meeting prior to the marketing of the Beech-Nut cigarette?

X-Q. 321. Yes, at the time of that meeting did you stop at Kenosha on your way back to Milwaukee?

A. No, I went directly to Chicago to meet Mr. Bush, because—

X-Q. 322. (Interrupting.) I mean from Chicago, 1567  
coming back to Milwaukee, did you stop at Beck & Mahl-  
sted at that time?

A. Well, I don't recall whether or not I did, I don't  
just recall that.

X-Q. 323. How long before the start of the campaign  
was that, did you say?

A. I should judge about three days prior to Septem-  
ber 26th.

X-Q. 324. You don't remember stopping there and  
telling a group of men in that office of the coming cam-  
paign?

A. I don't recall that.

1568

X-Q. 325. You don't recall seeing Mr. Lewis there at  
that time?

A. No, sir, I didn't know Mr. Lewis at that time.

X-Q. 326. When you came to Milwaukee to take this  
P. Lorillard position in January, 1921, you became rather  
a marked figure, didn't you, as holding a position of  
that kind with such a well known company?

A. Well, I wouldn't say a marked figure. I made  
it my business to become permanently acquainted with  
the people in position to do me some good in the further-  
ance of the sale of the brands I represented, yes.

X-Q. 327. That was one of your objects, to become 1569  
well known?

A. Among retail dealers and better class of consum-  
ers, yes.

X-Q. 328. It is quite possible, isn't it, that Mr. Lewis  
knew who you were very soon after you arrived?

A. He possibly knew who I was, but as I didn't know  
him I couldn't say. He may have known a lot of things  
I didn't know anything about.

X-Q. 329. Was I correct in understanding you to say

1570 that even after this time you met Mr. Lewis in the Loop Smoke Shop that you never saw him any other times except the three times you have mentioned?

A. Not to my recollection, no, sir.

X-Q. 330. You don't remember seeing him, even though you were in and out of the same dealers' offices frequently?

A. No, I don't recall ever seeing him or having any conversation other than the three times I have mentioned.

X-Q. 331. Did I understand you to say, Mr. Goldstein, in your direct examination, that you referred to  
1571 Beech-Nut cigarettes in your conversation with Mr. Lewis, as one of the Beech-Nut lines?

A. Well, it came about in this way. [Do you wish me to tell you just exactly how it was said and brought about?

X-Q. 332. Just answer the question, yes or no.

A. I was in this particular store, the first meeting when I presented Mr. Lewis with a package of Beech-Nut cigarettes. He was smoking a cigarette at that time and I said, "I notice you are a cigarette smoker, I would like to present you with a package of our Beech-Nut cigarettes and you will find the Beech-Nut cigarettes as  
1572 high a quality of cigarette as the rest of the Beech-Nut line, particularly Beech-Nut scrap." That was the exact conversation regarding Beech-Nut line.

X-Q. 333. Did you make a practice of referring to the Beech-Nut line and meaning those Beech-Nut tobaccos and cigarettes put out by the Lorillard Company?

A. Absolutely not. The reason this line was mentioned was because Mr. Lewis had put a direct question to me prior to that as to whether or not we manufactured any other Beech-Nut goods and I had told him, "Yes, we manufacture a Beech-Nut scrap and Beech-Nut

plug, you have no doubt heard of them as the largest scrap tobacco dealers in the world." And he said, "Yes, I heard of Beech-Nut scrap in Pennsylvania several years ago." Then I made the remark, "You will find Beech-Nuts as high quality cigarettes as the rest of the Beech-Nut line, particularly Beech-Nut scrap." 1573

X-Q. 334. Do you know Mr. Charles Tuckwell?

A. Yes, sir.

X-Q. 335. Was he in the Lorillard Company while you were there?

A. Just what do you mean by that?

X-Q. 336. While you were in the Lorillard Company.

A. Was he employed by them?

X-Q. 337. Yes. 1574

A. Yes, he was employed by the Lorillard Company while I was in their employ, yes, but not since I have been in the Wisconsin territory.

X-Q. 338. Do you know why he left the Lorillard Company?

A. I couldn't say, I haven't any means of knowing that.

X-Q. 339. Did you see him often during the campaign on Beech-Nut cigarettes?

A. Oh, yes, practically when I was in town every day and sometimes two or three times a day. 1575

X-Q. 340. Was he a friend of yours?

A. Well, he is so far that he did everything he possibly could to help me increase my business here. I would consider that a friend, I would consider him a very dear friend.

X-Q. 341. Was he friendly then to the Lorillard Company at the time you were introducing the these Beech-Nut cigarettes.

X-Q. 342. Well, I couldn't say whether he was a friend of Lorillard Company, but I know he was friendly

- 1576 to their representatives and naturally he must have been friendly to the company.

X-Q. 343. Have people ever asked you if the Beech-Nut tobacco and cigarettes were made by the Beech-Nut Packing Company?

A. Never.

X-Q. 344. You have never heard any comments or curiosity in regard to that question?

- A. That was only once, and that was when I mentioned to you as the experience I had when I was sampling the consumer. That is the only direct connection the consumer or anybody had brought out to me, mentioning the Beech-Nut Packing Co.

1577 X-Q. 345. Did you ever make the statement that most people took Beech-Nut cigarettes to be a product of the gum people?

A. Absolutely not.

X-Q. 346. Did you ever make the statement that the Lorillard salesman could offer cigarettes as the product of the Beech-Nut gum people, that there were no instructions against it?

A. Absolutely not.

X-Q. 347. Why were you transferred to Chicago, Mr. Goldstein?

- 1578 A. Well, I will tell you just exactly why, the way it was explained to me. The early part of last year the Vice-president of our company, Mr. B. L. Belt, was there in Chicago and I had asked him what their motive was in coupling me up with another head salesman to assist him, and he says, "Why, because we feel you are the proper man for this territory, we are promoting you by putting you here." That is the information I received from one of the officials of the company, due to the fact Chicago is one of the largest, in fact the second largest, Turkish market we have, and I had a wider experience and was put in that territory.

X-Q. 348. Did the campaign on Beech-Nut cigarettes continue after December 16th, 1921, when you left here? 1579

A. Do you mean in Milwaukee?

X-Q. 349. In Wisconsin.

A. I couldn't say. I don't have any idea as to what line of work they did in this territory after I left here.

X-Q. 350. How long was the special introductory campaign announced for when you entered into it?

A. Well, it was not set for any definite date, but I was to work Beech-Nut cigarettes as my first leader until I was further advised.

X-Q. 351. Had the campaign been withdrawn at the time you left Milwaukee? 1580

A. No, sir.

Cross Examination Closed.

*Re-direct Examination.*

By Mr. Cavanagh:

R-D Q. 352. In your cross-examination a few moments ago you referred to sampling the consumer. Will you just explain what you mean by that, how you proceeded to "sample the consumer" with Beech-Nut cigarettes? 1581

A. Well, what I mean by sampling the consumer, it has always been the policy of the Lorillard Tobacco Company to do as much work directly with the consumer as possible and in interviewing a consumer we come in personal contact with the consumer and in this way we are able to tell him of the quality of our brand and try to make a prospective consumer out of our competitive smokers. As a rule when a man is—when for instance I am out for business during the course of my day's work I carry along several packages of cigarettes, particularly during the Beech-Nut campaign I sampled between I



- 1582 should judge ten and fifteen packages a day and every time I saw a competitive consumer smoking such brands as Camels, Lucky Strikes, Chesterfields, Fatimas and Omars, I make it my business to stop this individual and try to interest him to try a package of our Beech-Nut cigarettes and see if I cannot convert him over to smoke our brand, and usually when a stranger was approached we would walk up in this manner, "Pardon me, sir, I notice you are indulging in cigarettes. Do you smoke domestic cigarettes all of the time?" "Well", he would say, "yes" or, "no." If he would say yes I would say, "I am interested in the marketing of Beech-
- 1583 Nut cigarettes, which is the latest brand marketed by the Lorillard Tobacco Company. This brand is guaranteed to retail at fifteen cents. You will find Beech-Nut cigarettes guarantee the highest grade Virginia and Burleigh tobacco obtainable and including we put in the finest quality Turkish leaf money can possibly buy, and there is no doubt in my mind if you will accept a package of these Beech-Nut cigarettes and will give them a good fair trial you will like them in preference to the brand you are smoking." Then he perchance may ask a question or two about the process of manufacture or the difference between the brand he is smoking and this
- 1584 brand, and naturally the answers pertain to what questions he would put to us, which we are prepared to answer. A man would happen to say, "Well, I just smoke domestic cigarettes, occasionally I like Turkish", then I would call attention to the fact we are also the manufacturers of such brands as Murads, Helmar and Dieties under the brand of S. Anargyros Company and "you have surely heard of those brands." "Oh, yes." "If you don't like Beech-Nuts I would appreciate your business on one of the Anargyros brands", re-mentioning the names of our most important brands. Of course, this sampling, you know, is a thing some men give you a

lot of time to talk to and others wouldn't. You run across a business man, he hasn't much time, you have to make it brief as possible and others are willing to listen and really want information about the different methods of manufacture of the different grades of tobacco put in the cigarettes and will ask questions. We call that advertising to the consumer. 1585

R-D Q. 353. In sampling the consumer will you state whether or not you ever had any of them ask, "Was that cigarette made by the Beech-Nut Packing Company, the Beech-Nut gum people?"

A. I have always eliminated the possibility of any confusion by mentioning, "This is the latest addition to the Lorillard brands, the latest brand manufactured by the Lorillard Tobacco Company." That eliminates any possibility of the consumer even asking if we manufacture gum or candy or any such products made by the Beech-Nut Packing Company because he is told right then and there it is a product of the Lorillard Tobacco Company. 1586

R-D. Q. 354. Now, when you were instructing or schooling your crew as to approaching the trade and consumers, what instruction did you give them? The same as this or different?

A. I gave them exactly the same instructions I have told you I used in sampling the consumer, asked them to follow that out in every case. 1587

R-D Q. 355. You have spoken of these four men you have had in your missionary or campaign crew at that time. Were all of these four men so instructed?

A. Absolutely.

R-D Q. 356. How many times?

A. Well—

R-D Q. 357. Approximately, daily or weekly?

A. Possibly two or three times a week.

1588 R-D Q. 358. You had charge of these men, did you not?

A. Yes, sir.

R-D Q. 359. What would happen to them if they disobeyed these instructions?

A. If I found they did, I dispensed with their services.

R-D Q. 360. What did you say the names of those men on the crew were?

A. E. A. Gimbel, W. C. Jackson and there was a Mr. New,—I can't remember his initials. He worked for me a short time, and M. J. Schimmel.

1589 R-D Q. 361. Can you give me an idea where each of these men are now?

A. Mr. New was a resident of Milwaukee, he lived on the south side. I had his record at the time, where he was, where he lived, and his record when I lived here. These records were all left in Milwaukee with Mr. Hopewell, and Mr. Gimbel also was a native of Milwaukee and I guess he is living here. Mr. Jackson is, I presume, around Milwaukee here somewhere. He is a single man, but I don't know just exactly where he could be located, but he is around Milwaukee. I have heard from folks that he has been seen.

1590 R-D Q. 362. And where is this other man?

A. Mr. Schimmel? He is still employed by the Lorillard Tobacco Company.

R-D Q. 363. No, as far as you know, all of those men are in and around Milwaukee, are they not?

A. I imagine so, yes, sir.

R-D Q. 364. Do you know the home address of any of them?

A. Not at this time, I don't see, sir.

R-D Q. 365. Do you know Mr. Schimmel's address?

A. Mr. Schimmel?

R-D Q. 366. Yes.

A. I believe he lives at 1522 Ford St. Los Angeles. 222B

R.D.Q. 322. He is a man that is still with you?

A. He is still with the company, that is the reason I know that.

R.D.Q. 323. Will you please state whether or not you ever instructed or permitted any of your crew to take orders for Beach-Nut food products?

A. That is ridiculous. Absolutely not. We are not allowed to take orders, even for competitive brands of cigarettes and tobacco. If you got an order from the dealer and the dealer says, "I would like to have some Chesterfields," or any other competitive brand, he was told he couldn't do that—"I am sorry, but I cannot get that down in my order blank, as that goes in as a separate and you would have to phone your order to the jobber." Our salesmen are not allowed to sell other merchandise than our own. 222C

R.D.Q. 324. Will you please state whether or not you ever knew any of your crew to take any orders for food products or to ask for any order of food products?

A. Never, absolutely not.

R.D.Q. 325. When one of your crew went into a store to sell a cigarette or introduce the tobacco, who was he supposed to see in there? 222D

A. Well, naturally he was supposed to see the buyer, the man who manages the store or has authority to do the buying, if he is going in to sell merchandise.

R.D.Q. 326. What was he supposed to have with him, under your instructions?

A. During the Beach-Nut campaign?

R.D.Q. 327. Yes.

A. He at all times had a sufficient amount of cigarettes with him to sell to retail dealers for cash and along with that he carried circulars advertising. I should judge when he would leave in the morning he

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0  
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1594 would carry possibly from fifty to seventy-five different pieces of advertising and from ten to fifteen cartons of cigarettes. When he got rid of this he reported up there to 84 Detroit Street, which was our warehouse at that time, and he would pay us for the cigarettes sold for cash and I would give him an equal amount in return for that money to replenish his stock, and then he would fill his supply of advertising matter again and would not report back again until the following morning.

R-D Q. 373. Would he go into a store with a single package of cigarettes?

1595 A. Absolutely not.

R-D. Q. 374. Without any advertising matter or cards?

A. Absolutely not. A man was instructed when he called on a retail dealer he was at all times to have at least two or three cartons of cigarettes, so if the dealer wished to buy them for cash he would deliver them right then and there, and if he ran out of cigarettes to sell for cash he was to come back to the wareroom or nearest jobber and replenish his stock.

R-D. Q. 375. You say you were out near this Beese store a few days ago. What kind of store is that?

1596 A. I should judge from the looks of the place it is a first class grocery store.

R-D Q. 376. Is it out in the suburbs or in the city?

A. Well, it is in the city, it is right directly in the city of Milwaukee.

R-D Q. 377. If one of your men of your crew went into that store and the buyer wasn't there or he didn't sell cigarettes, was he supposed to be half an hour or an hour in that store?

A. Absolutely not, if he wasn't living there. He

wouldn't have any objective in staying there half an hour or even five minutes. 1597

R-D Q. 378. Have you ever been in Mr. Beese's store?

A. Well, just recently. I walked in there to get an idea of what character of store it was and who it was owned by, and whether they had ever had Beech-Nut cigarettes or sold cigarettes, and I found Mr. Beese had sold out, and I can't just repeat the gentleman's name who owns it now. I found that Mr. Beese never carried cigarettes or tobacco products of any kind.

R D Q. 379. Could you find out if a Miss Heller was working there yet?

1598

A. Working there now?

R-D Q. 380. Yes.

A. No, she is not working there any more.

R-D. Q. 381. How do you know?

A. Because I have inquired from this dealer and he told me she resigned when he had taken over the store.

R-D Q. 382. Did he tell you about anything she said to him before she left?

A. Well, I inquired as to—

By Mr. Johnson: Objection to that as hearsay.

The Witness (Continuing): I inquired from this merchant and asked him who owned this store and he told me he did, and I asked him if Mr. Beese ever owned this store and he said, "Yes, I purchased the store some time in the middle of 1922." I asked him if he has an employe there by the name of Miss Heller and he said, "No, she left here when I purchased the store, I asked him how long she had worked there, and he said, "Approximately two years." I asked him whether he has any means of knowing whether she was ever acquainted with any Beech-Nut man and he said "Why

1599

1600 yes." "How do you know?" He said, "Well when I purchased the store she left here, she told me she knew the Beech-Nut man." And he further said that when she left she had recommended the purchase of Beech-Nut Packing Company's goods.

Mr. Johnson: Objection to this question and answer as incompetent, irrelevant, as hearsay, as secondary evidence.

By Mr. Cavanagh:

1601 R-D Q. 383. I understood you to testify on cross examination that you did not know whether or not a Lorillard man was in that store or not, one of your crew.

A. Well, I doubt very much whether there was a Beech-Nut cigarette man in there.

R-D Q. 384. Of your own personal knowledge you don't know whether he was in there or not?

A. Absolutely not.

R-D Q. 385. I understood that Mr. Schimmel had no particular route, but worked in general around Milwaukee, is that right?

1602 A. Well, his instructions were, due to the fact he had a car and could readily get around in the scattered sections, to work all of the scattered sections first, and I started him off on the northwest side, working all systematically but the car-line streets, and considerable of his time was spent driving me around to the jobbers and helping me place interior and exterior advertising.

R-D Q. 386. Now, as to these jobbers, on cross-examination you were referred to certain exhibits, circulars, purported to be sent out by the P. Lorillard Company and marked Plaintiff's Exhibit 12-A, B and C. Do you personally know what jobbers received these, or if any jobbers received them?

A. Well, I wouldn't call them circulars. When we marketed a brand over here I was not requested to solicit orders for Beech-Nut and the company sent each jobber in the territory a blank order on it, which has been the customary thing in marketing new brands of cigarettes and in so doing they sent the jobber this particular letter which Mr. Johnson called a circular, notifying him of the shipments made to him and the quantity of cigarettes and also mentioning the offer they make indirectly to the jobber for the jobber salesmen. 1603

R-D Q. 387. But you don't know whether the jobbers received those letters or not, of your own knowledge personally? 1604

A. No, I have no means of knowing what correspondence the jobbers received from the New York office because I received no copies of them.

R-D Q. 388. Do you know who owns or runs the Loop Cigar Store?

A. Yes, sir, it is owned by the Cavala Tobacco Company. The owners of that firm are Mr. George Panagis and Peter Panagis.

R-D Q. 389. Now, when you had this conversation with Mr. Lewis in this cigar store at the time you say you were introduced by Mr. Tuckwell, what impression did you get from his questions that you say he asked you? 1605

A. The questions of Mr. Lewis?

R-D Q. 390. Yes.

A. Well, from the little notices I have been reading in the paper about the litigation going on between the Beech-Nut Packing Company and the P. Lorillard Company I sort of felt he was trying, by the question he put to me, "Do you manufacture any other Beech-Nut line?" it looked to me as if he was trying to get me to commit myself to say yes, we manufacture other lines, but when I said yes, we made other Beech-Nut lines and I men-



1606 tioned to him we manufactured Beech-Nut scrap and Beech-Nut plug, it seemed to me he was trying to make me commit myself in some way.

R-D. Q. 391. That is, you mentioned to him tobacco lines?

A. Absolutely, Beech-Nut scrap and Beech-Nut plug.

R-D. Q. 392. And those are tobaccos?

A. Yes, sir.

R-D. Q. 393. I understand you are now in the Chicago territory for the Lorillard Company?

A. Yes, sir.

1607 R-D. Q. 394. Is that a larger territory than the Milwaukee district?

A. Yes, sir.

R-D. Q. 395. Much greater population, I presume?

A. Oh, certainly.

R-D. Q. 396. Now, about this S. Anargyros concern, who controls that, if you know?

A. Lorillard Tobacco Company. All of the S. Anargyros brands are brands owned and controlled by the P. Lorillard Company.

R-D. Q. 397. What kind of cigarettes do they manufacture?

A. The brands they manufacture?

1608 R-D. Q. 398. Yes.

A. Are known as Turkish cigarettes, which are all Turkish brands manufactured by the P. Lorillard Company put under the name of "S. Anargyros."

R-D. Q. 399. Will you please state whether or not in the marketing of your Beech-Nut cigarettes or any other Lorillard tobacco product you would think it either necessary or advisable to trade on the reputation or name of any other concern?

A. You mean in the Lorillard tobacco, marketing a new product? Absolutely not.

R-D. Q. 400. Why not?

A. Because we are known as the manufacturers of the greatest percentage of volume of Turkish cigarettes marketed in the United States, and then again we are known as the manufacturer of the famous Beech-Nut scrap, which I believe consists of about seventy-five or eighty per cent. of all of the scrap manufactured in the United States, and it would be ridiculous of any salesman who has had any experience at all to come out and mention the reputation of the other manufacturers when he has such famous brands as the Moguls, Egyptian Dieties, Murads and Climax plug to talk about, which are very famous in that particular line in tobacco commodities.

1609

1610

By Mr. Johnson: Objection to that part of his answer which gives statistics as to the distribution and sales of Beech-Nut scrap tobacco, as hearsay.

By Mr. Cavanagh:

R-D. Q. 401. How long were you in the army?

A. I should judge all told about eleven months.

R-D. Q. 402. And that was the only period for eleven years that you were not with the P. Lorillard Company, is that correct?

A. Yes, sir, absolutely.

1611

R-D. Q. 403. Did you go over seas?

A. Yes, sir.

R-D. Q. 404. Did you see any active service?

A. Absolutely.

R-D. Q. 405. Were you wounded?

A. Yes, sir.

R-D. Q. 406. In what battle?

A. In the St. Mihiel sector.

Re-direct Examination Closed.

1612

*Re-cross Examination.*

By Mr. Johnson:

R-D. Q. 407. Were you disappointed in the quality of the Beech-Nut cigarettes?

1613

A. Well, I was not exactly disappointed in the quality of the Beech-Nut cigarette. The brand was manufactured on a similar test that helped make Beech-Nut scrap a great seller. It is inclined to be a little sweet, which did not meet with the approval of the average smoker that liked a little more kick to it. The quality was all right, but the kick was not there, and that is the only complaint we ever heard on that brand.

R-D. Q. 408. Are you handling the distribution of them now in Chicago?

A. No, sir, the only brands I handle now are the Turkish brands of cigarettes in Chicago. The Beech-Nuts are under the supervision of the tobacco department which worked all of the Lorillard products.

R-D. Q. 409. Did you get any letter or circular at all from the P. Lorillard Company instructing you and your salesmen not to offer these Beech-Nut cigarettes as the product of the Beech-Nut Packing Company?

1614

A. No, sir, I didn't receive that, because I imagine the company felt it was unnecessary to call their head salesmens' attention to that fact, as they sort of felt it wouldn't be done.

R-D. Q. 410. You are sure you never got any such letter or circular from the P. Lorillard Company?

A. I am sure I did not.

Re-cross Examination Closed.

Deposition closed.

Signature waived.

1615

CHARLES TUCKWELL, a witness called on behalf of the defendant, P. Lorillard Company, being first duly sworn, deposes and says in response to interrogatories propounded to him by Mr. Cavanagh, as follows:

*Direct Examination.*

Q. 1. Please state your name, age, residence and occupation?

A. Charles Tuckwell, age 32, residence 1237-25th Street, Milwaukee, Wisconsin, cigar clerk.

Q. 2. Where are you employed, Mr. Tuckwell?

A. 409 East Water Street, Cavala Tobacco Company.

1616

Q. 3. How long have you been employed at that place?

A. Since September 8th, 1921.

Q. 4. Do you know from whom that store is leased?

A. Piggly Wiggly Company.

Q. 5. What is the address of it?

A. 409 East Water.

Q. 6. Where were you employed before that?

A. M. L. Annenberg.

Q. 7. In the same business?

A. Cigar and newspaper business, not as a clerk.

1617

Q. 8. What were your duties around there?

A. Salesman, and collect for the Sunday papers, Chicago papers.

Q. 9. At your store, at your present place of employment you sell the Beech-Nut cigarette and Beech-Nut scrap tobacco?

A. Both.

Q. 10. Do you sell any products of the Beech-Nut Packing Company?

A. Beech-Nut gum.

Q. 11. Do you sell any candies of that company?

A. Just the gum.

1618 Q. 12. How long have you been selling the Beech-Nut cigarette, to your knowledge?

A. Oh, it has been over a year now, I think it was a year last October or thereabout.

Q. 13. Are you acquainted with Mr. Goldstein?

A. Yes.

Q. 14. How long have you known Mr. Goldstein?

A. About January, 1920.

Q. 15. Do you know what concern he represents?

A. P. Lorillard Company.

Q. 16. What line of business are they in, do you know?

1619 A. Manufacturers of cigars, cigarettes and tobacco.

Q. 17. Do you know Mr. Lewis of the Beech-Nut Packing Company?

A. Yes, sir.

Q. 18. What does he do with that company, as far as you know?

A. He sells Beech-Nut products, as far as I know.

Q. 19. How long have you known Mr. Lewis?

A. About two years.

Q. 20. Now, Mr. Tuckwell, do you know personally if Mr. Lewis knows Mr. Goldstein?

A. Yes, sir.

1620 Q. 21. How do you know that?

A. I introduced him to Mr. Goldstein.

Q. 22. Will you please state the circumstances and when and where you introduced Mr. Lewis and Mr. Goldstein?

A. I don't know about what date it was, it was about the time Mr. Goldstein was putting on Beech-Nut cigarettes for the Lorillard Tobacco Company, and Mr. Lewis happened in the store one day, one morning, and when Mr. Goldstein came in a few minutes after he did and I said, 'Mr. Lewis, I want you to meet Mr. Goldstein, the P. Lorillard Company is putting on Beech-Nut ciga-

rettes", and then I says, "Mr. Goldstein, meet Mr. Lewis of the Beech-Nut Packing Company." 1621

Q. 23. Did you hear or were you present at any conversation then between Mr. Lewis and Mr. Goldstein?

A. They did talk about their products between themselves, but waiting on trade I didn't get much of it.

Q. 24. Was anybody else in that store with Mr. Lewis at the time?

A. There was one man there he introduced me to as sort of an investigator of some kind for the Beech-Nut Packing Company.

Q. 25. Do you recall what his name was?

A. I don't know what his name was.

Q. 26. Then when you introduced Mr. Lewis to Mr. Goldstein you mentioned the concern that each worked for to the other? 1622

A. Absolutely.

Q. 27. Did you hear any part of the conversation at all between Mr. Lewis and Mr. Goldstein?

A. Well, I just got straggles of the conversation, it was both their products, same as any salesmen meeting one another would carry on.

Q. 28. Can you remember any of that conversation, state any of it?

A. Mr. Lewis asked Mr. Goldstein if they made any other Beech-Nut products and Mr. Goldstein said they made Beech-Nut scrap and Beech-Nut plug. 1623

Q. 29. Will you please state whether or not you heard Mr. Goldstein say anything to Mr. Lewis which would lead you to believe that Mr. Goldstein was trying to leave the impression or statement that the Beech-Nut cigarettes were made by the Beech-Nut Packing Company?

A. No, Mr. Goldstein didn't say anything to that effect. It seems to me like Mr. Lewis and Mr. Goldstein both being in the employ of their respective companies

1624 would know that one did not make cigarettes and the other did not make gum.

Q. 30. So you didn't hear any such conversation?

A. No, absolutely not.

Q. 31. Have you ever heard any comments or inquiries or remarks from any of your customers which would lead you to believe they thought the cigarettes or scrap tobacco were made by the same people that made the gum?

A. Very seldom, if ever.

Q. 32. You don't recall any such?

A. No, it has been four or five years.

1625 Q. 33. Before the cigarettes were on the market?

A. Before the cigarettes were on the market.

Q. 34. Would you yourself ever confuse such products as cigarettes or scrap tobacco with gum or candies or food products?

A. You mean, the Beech-Nut? No.

Q. 35. Why not?

A. I was employed by Lorillard's for about seven years and I knew positively they did not make any ham, bacon, candies or gum.

Q. 36. Never heard of them making such products?

A. Never.

1626 Q. 37. What has their line been directed to entirely?

A. Lorillards?

Q. 38. Yes.

A. Tobacco and cigarettes and little cigars.

Q. 39. Did you know of the P. Lorillard Company making any packing products at all?

A. No, sir.

Q. 40. Have you ever sold any tobacco products as those of the Beech-Nut Packing Company?

A. Never.

Q. 41. About when was it you say you introduced Mr. Goldstein to Mr. Lewis?

A. I think about October. I don't know, it was when Mr. Goldstein was putting on Beech-Nut cigarettes for Lorillard. 1627

Q. 42. What year?

A. 1921, that was the only year Mr. Goldstein was in this territory.

Q. 43. And was it in this cigar store which is leased from the Piggly Wiggly on East Water Street where you are at present that you introduced them?

A. Yes, sir.

Q. 44. Are you still buying goods from Mr. Lewis of the Beech-Nut Packing Company?

A. I never bought goods from Mr. Lewis, my firm buys goods from them. At that time I don't believe they did buy direct. 1628

Q. 45. But you knew Mr. Lewis?

A. I knew Mr. Lewis and knew what he did.

(Direct Examination closed.)

*Cross Examination.*

By Mr. Johnson:

X-Q. 46. Where is this store, Mr. Tuckwell, in which you say this incident happened? 1629

A. 409 East Water Street.

X-Q. 47. What sort of tobacco store is that?

A. Retail cigars and tobacco.

X-Q. 48. Any wholesale?

A. No wholesale.

X-Q. 49. About what size store room is it, just roughly?

A. It is ten by about sixty feet.

X-Q. 50. How many clerks have you?

A. Just one.



1630 X-Q. 51. Just yourself?

A. Just myself, and I have one of the boys from the wholesale department relieve me at noon and at night.

X-Q. 52. And have you yourself anything to do with the wholesale department?

A. Nothing.

X-Q. 53. About how many customers come into your store in a day, approximately?

A. Four hundred and fifty to five hundred.

X-Q. 54. You are kept pretty busy then waiting on those people, aren't you?

A. Quite busy.

1631 X-Q. 55. As a rule have you much time to talk to individuals?

A. At certain times, before the banks open up and right after lunch, about two or two thirty.

X-Q. 56. When did this meeting of Mr. Goldstein and Mr. Lewis take place in your store?

A. I don't know exactly what date it was, I think it was in October some time, about 9:30 in the morning.

X-Q. 57. How do you remember that date?

A. I don't remember the date, but I kind of remember the month because they just put on Beech-Nut cigarettes in that month.

1632 X-Q. 58. Had they already put them on?

A. Just started to put them on.

X-Q. 59. Had you known Mr. Lewis for long?

A. I had known Mr. Lewis for about two years.

X-Q. 60. Had you known Mr. Goldstein for long?

A. He succeeded me, I think, in January, 1921.

X-Q. 61. Succeeded you in what?

A. As head salesman for the state of Wisconsin for the Lorillard Tobacco Company.

X-Q. 62. And you were with the Lorillard Tobacco Company yourself for how long?

A. Seven years.

X-Q. 63. What makes you think that Mr. Lewis and Mr. Goldstein had never met before? 1633

A. Because I had introduced them.

X-Q. 64. Did you have any way of knowing that they had not been introduced before?

A. No, sir, only by the way they acted. If they had met before one of them would have said he had the pleasure of meeting Mr. So-and-so previously.

X-Q. 65. Do you remember their ever being together in your store before?

A. Not before. If they had I would have introduced them, I believe.

X-Q. 66. You never saw them together before? 1634

A. No, sir.

X-Q. 67. About what time of day was that?

A. About 9:30, I should judge.

X-Q. 68. You say there were a good many people in the store?

A. I didn't say there was a great many before the banks opened up, the banks open up at ten o'clock.

X-Q. 69. You say you didn't hear much of their conversation?

A. No, sir.

X-Q. 70. You said that, didn't you?

A. Yes, sir.

X-Q. 71. And you have also said you only heard straggles of the conversation? 1635

A. Yes, sir.

X-Q. 72. So you really wouldn't have an opportunity really to say what they did say or didn't say to each other at that time, if you only heard snatches of it?

A. Only what I told Mr. Cavanagh.

X-Q. 73. You heard the part that you told Mr. Cavanagh, but as to the rest you wouldn't be able to say what they said or didn't say, would you?

A. No, sir.

1636 X-Q. 74. Then you cannot be sure, can you that they did not converse along a great many different lines, from the few remarks you have repeated as you having heard?

A. I didn't get the meaning of that.

X-Q. 75. I say, they might have had a great deal more conversation than the few remarks you repeated?

A. They might have, although they were there only about half an hour.

X-Q. 76. Were they talking together about a half hour?

A. The three of them were together about half an hour, whether talking together, I don't know. Mr. Goldstein was sampling consumers.

1637 X-Q. 77. Did you ever hear Mr. Goldstein speak of the Beech-Nut line of products he was selling?

A. Only tobaccos and cigarettes.

X-Q. 78. Did he speak of the tobaccos and cigarettes of the Lorillard Company as the Beech-Nut line of products?

A. No, sir, not that I know of, I never heard him say that.

1638 By Mr. Johnson: Will you please read to the witness again Q. 28 of the direct examination where Mr. Lewis asked Mr. Goldstein if the Lorillard Company put out any other Beech-Nut products.

(Thereupon the said question was read)

By Mr. Johnson:

X-Q. 79. You remember, then, do you, Mr. Tuckwell, Mr. Goldstein referring to other Beech-Nut products of the Lorillard Company at that time?

A. Yes.

X-Q. 80. Did you ever hear him at any other time refer to the group of Beech-Nut products of the Lorillard Company? 1639

A. Mr. Goldstein always would talk about Beech-Nut scrap and Beech-Nut tobacco owing to the big sale of Beech-Nut scrap. He was putting on Beech-Nut cigarettes on Beech-Nut scrap's reputation.

X-Q. 81. In your store did you ever refer to the Beech-Nut scrap tobacco and the Beech-Nut cigarettes together as Beech-Nut products? Did you ever speak to your customer of those two things as Beech-Nut products?

A. Only when they come in and say, "Give me a package of Beech-Nuts" I would ask them what kind of Beech-Nut they wanted, cigarettes, gum or tobacco. 1640

X-Q. 82. Did you have many ask you just for Beech-Nut? Was that question often asked of you?

A. "Give me a package of Beech-Nuts."

X-Q. 83. Was that often asked of you?

A. Yes.

X-Q. 84. And what did you usually say?

A. "What kind of Beech-Nuts do you want?"

X-Q. 85. How many different Beech-Nut products did you carry at that time?

A. Three. 1641

X-Q. 86. What were they?

A. Gum, scrap tobacco and cigarettes.

X-Q. 87. Did you ever see Mr. Goldstein and Mr. Lewis together after that?

A. No, never did.

X-Q. 88. Did each of them come into your store frequently? Did you often see one or the other of them in your store?

A. Yes, quite often.

X-Q. 89. So they might have been in there together without your noticing it, might they not?

1642 A. They might have been.

X-Q. 90. Wasn't it even probable they would have been in there together, if each of them came in so many times, as you say? Quite likely they may have been in there together a number of times?

A. They may have been, but I didn't notice.

X-Q. 91. Did you ever see them together before this meeting you have described?

A. I never saw them before that, not together.

X-Q. 92. Was each one of them coming into your store from time to time before that?

A. Yes, sir, Mr. Lewis used to come in when he wasn't  
1643 on the road about every other day, maybe twice a week. Mr. Goldstein when he was in town used to be in every day, and sometimes twice a day.

X-Q. 93. Is it not quite likely they were in there together previous to that meeting, without your noticing it?

A. Well, hardly, because I notice pretty nearly everybody comes in. The store is a little small.

X-Q. 94. You wouldn't be able to say, would you, that it was not possible for them to have met in your store before the meeting you have described, would you?

A. They might have met, but not knowing one another—I don't think they knew one another before I introduced them.  
1644

X-Q. 95. To go back to this meeting you have described again, there was considerable of their half hour's conversation that you did not hear, as I understand it?

A. Yes.

X-Q. 96. You have said, Mr. Tuckwell, you were employed by the Lorillard Company for seven years. When did you leave that company?

A. November, 1920.

X-Q. 97. And since then have you been in tobacco stores?

A. Calling on retail trade and working in retail stores. 1645

X-Q. 98. You have been in the tobacco business ever since then?

A. Yes.

X-Q. 99. And you have been handling, have you, Lorillard brands.

A. I have been handling the Lorillard brands.

X-Q. 100. Quite a number of them?

A. Yes.

X-Q. 101. When this Beech-Nut cigarette first came to your store then, came into your stock, you knew it was a Lorillard product? 1646

A. Yes, sir.

X-Q. 102. Before it ever came to your store?

A. Yes, sir.

X-Q. 103. Have you handled or do you handle Camels and Lucky Strikes and Fatimas?

A. Yes, sir.

X-Q. 104. Who puts out Camels?

A. R. J. Reynolds.

X-Q. 105. Who puts out Lucky Strike?

A. American Tobacco Company.

X-Q. 106. And who puts out Fatimas?

A. Liggett & Meyers. 1647

X-Q. 107. About how many Beech-Nut cigarettes do you sell a day, do you know?

A. Now?

X-Q. 108. Yes.

A. Three or four packages.

X-Q. 109. Have you sold more than that every day at other times?

A. When Mr. Goldstein was putting them on, yes.

X-Q. 110. When did you sell the most, at what period, I mean?

1648 A. About the 1st of November, I think, Mr. Goldstein gave us permission to.

X-Q. 111. What year?

A. The year they put them out, I think that was 1921, when Mr. Goldstein was here.

X-Q. 112. About how many did you sell a day then, can you remember?

A. Why, that deal was only on one day. We were allowed to sell two packages and give one. That is what they call a factory deal, sold about three thousand that day. That would be about one hundred and fifty packages.

1649 X-Q. 113. Are you pretty familiar with the faces of the people who come into your store?

A. Pretty familiar.

X-Q. 114. Do you know whether many of the same people who bought Beech-Nut cigarettes at first repeated on them?

A. For a while, but they are not now.

X-Q. 115. Did you hear these people say anything about the Beech-Nut cigarettes?

A. They would ask for them and I would give them to them.

1650 X-Q. 116. Did you hear anything said about the quality of the cigarettes?

A. Never.

X-Q. 117. Where is the gum, the Beech-Nut gum you have spoken of, displayed for sale in your store?

A. On the top of the counter.

X-Q. 118. What is inside of the counter?

A. Cigars.

X-Q. 119. Where are the cigarettes from there?

A. Back of them in a coop like this, painted black (indicating).

X-Q. 120. Just about directly back of the counter where the gum is?

A. No, the gum is at this end and the cigarettes are in the middle. They have the gum in a big glass jar, you know. 1651

X-Q. 121. You have said on direct examination that you heard a few comments and inquiries about who made the Beech-Nut gum as I understood it. Can you describe any more in detail those incidents? What remarks or questions you had asked you these times you have spoken of?

A. I don't know what you mean.

X-Q. 122. You have already said, in reply to Mr. Cavanagh's question, that several years ago, but not recently you have heard a few comments and inquiries as to who was putting out the Beech-Nut tobacco? 1652

A. Yes, sir.

X-Q. 123. Do you remember what kind of question they asked?

A. Just asked me who was putting out Beech-Nut tobacco and I told them Lorillard was.

X-Q. 124. They asked you whether the same people were putting it out as were putting out the Beech-Nut gum?

A. Didn't mention the Beech-Nut gum.

X-Q. 125. Do your customers ever ask you who makes the different brands of cigarettes or brands of tobacco? 1653

A. Very, very seldom.

X-Q. 126. That was unusual then, was it, for these questions to be asked?

A. At that time I was in the employ of the Lorillard Company and they just started to put on Beech-Nut scrap in the state of Wisconsin and those that have asked me would be retailers, wouldn't be customers, because I had nothing to do with the scrap end of it when I was here with Lorillards.

X-Q. 127. Did any of these people who inquired



1654 say why they were interested or why they were curious about who was making them?

A. No, just asked me who was putting them out, just the same as they would any new cigarette.

X-Q. 128. This is tobacco you are speaking of?

A. Yes, sir, the same thing applies to cigarettes.

X-Q. 129. As I understand it, on the direct examination you said you had not heard any of those comments or inquiries in regard to Beech-Nut cigarettes, is that right?

A. Inquiries you were just asking about?

1655 X-Q. 130. Yes, similar inquiries about Beech-Nut cigarettes.

A. Very seldom.

X-Q. 131. You did hear some, you think?

A. Maybe one or two when they were first put out.

X-Q. 132. Then you did hear some of the same kind of inquiries as to who was the maker?

A. At that time I was back of the counter. They could see a carton of Beech-Nut cigarettes on the counter and say, "Who is putting this out, something new? I would say, "Lorillard Tobacco Company."

1656 X-Q. 133. But as you were busily waiting on these several hundred customers as they came into your store you didn't have much chance to notice what the customers were saying, did you?

A. Well, different remarks they would make, they would direct them at me.

X-Q. 134. Did you make any attempt to remember what remarks or inquiries or comments were made on that subject at the time?

A. Only what I have told you.

X-Q. 135. I mean, at the time did you make any effort to remember or did you make any notes?

A. No, just passed it up same as I would if any-

body asked me, "Have you got anything new to smoke." 1657

X-Q. 136. Did anyone ever ask you to keep any note or memorandum of such questions?

A. No, never.

X-Q. 137. And all you can say is that you do not remember many of such inquiries or comments, is that right?

A. If I had to tell you what the customer said, I could not, because I just passed them right up.

Cross examination closed.

*Re-direct Examination.*

1658

By Mr. Cavanagh:

R-D. Q. 138. Mr. Tuckwell, how long to your knowledge has the Beech-Nut scrap tobacco of the Lorillard Company been on sale in the Milwaukee territory?

A. I think in 1918 is when they started to work it.

R-D. Q. 139. Had you seen it on the market here before then?

A. I think there was a few jobbers in Milwaukee had Beech-Nut scrap.

R-D. Q. 140. If you had heard, since the cigarette was introduced here in 1921, numerous comments or inquiries as to who it was made by or whether it was made by any other company than the Lorillard Company, it would have been impressed on your mind, wouldn't it?

1659

A. I think it would.

Re-direct Examination closed.

Deposition closed.

Signature waived.

1660

January 30th, 1923.

Met pursuant to adjournment; parties present as before.

MICHAEL SPHEERIS, a witness called on behalf of defendant, being first duly sworn, in response to interrogatories propounded to him by Mr. Cavanagh, deposes and says, as follows:

*Direct Examination.*

1661 Q. 1. Please state your name, age, residence and occupation?

A. My name is Michael Spheeris, age 38, residence 348-12th Street, Milwaukee, Wisconsin, occupation merchant.

Q. 2. Where is your place of business located?

A. 420 Wells Street, Milwaukee, Wisconsin.

Q. 3. What do you sell in your store, Mr. Spheeris?

A. Tobacco, cigarettes, candy, chewing gum and cigars.

Q. 4. Do you sell the Beech-Nut scrap tobacco and the Beech-Nut cigarettes?

1662 A. I do.

Q. 5. Likewise do you sell the Beech-Nut chewing gum?

A. Yes, sir.

Q. 6. Do you sell any other products of the Beech-Nut Packing Company?

A. No.

Q. 7. Candies or anything of that sort?

A. No, nothing else.

Q. 8. How long have you been selling the Beech-Nut scrap tobacco in your store?

A. Well, I don't remember exactly, but it is pretty close to three years, I guess. 1663

Q. 9. How long have you been selling the Beech-Nut cigarettes in your store?

A. About a year and a half, I think, ever since they came out here.

Q. 10. Do you know who makes the Beech-Nut scrap tobacco and the Beech-Nut cigarettes?

A. Yes, sir.

Q. 11. What concern?

A. Lorillard.

Q. 12. Now, will you state in your own words when you first put in the Beech-Nut cigarettes just exactly how you came to put them in and what happened? That is, who brought them to you and what you did. 1664

A. Before the Beech-Nut cigarettes came here we had calls from different people asking if we had cigarettes and we told them they were not in town yet, but when they came in town Lorillard's man, their specialty man, came to us and got in an order.

Q. 13. Do you know who that specialty man was?

A. Mr. Goldstein, a fellow by the name of Goldstein.

Q. 14. And he called upon you to ask you to take an order, did he?

A. Yes, sir. 1665

Q. 15. When he called on you first to get this order, what did he say? Did he make any remarks or anything?

A. He didn't make any remarks of any kind. He mentioned Beech-Nut cigarettes and he asked whether I would allow him to put a poster of Beech-Nut cigarettes in the window.

Q. 16. Will you state whether or not he had the posters with him?

A. He had posters with him, yes, sir, when the cigarettes were in town.

1666 Q. 17. Did you give him an order for the cigarettes at that time?

A. I did.

Q. 18. Will you state whether or not you allowed him to put the posters in the window?

A. I allowed him to put the posters on the window, yes.

Q. 19. What kind of poster was that, do you know?

A. A great big poster says on it, "Beech-Nut cigarettes, made by Lorillards."

Q. 20. You knew he was a Lorillard man when he called, did you not?

1667 A. I did, yes.

Q. 21. Will you state whether or not he made a remark or said anything which would lead you to believe that these cigarettes were made by the same people made the gum?

A. He made no such remarks. I knew they were made by Lorillard's and I knew the gum was made by the Beech-Nut Packing Company, a different company entirely.

1668 Q. 22. Were you yourself ever confused or led into belief that the Beech-Nut scrap tobacco or Beech-Nut cigarettes were made by the same people who made the gum?

A. No, sir.

Q. 23. And did you ever hear of any remarks or questions asked by any of your customers which would lead you to believe they thought the Beech-Nut scrap and Beech-Nut cigarettes were made by the gum company?

A. None of them ever mentioned anything like that, none of our customers. That is, the consumers came in and said, "Give us Beech-Nut gum" or "Scrap" or "Beech-Nut cigarettes."

Q. 24. So you have never had inquiries of that sort at all?

A. No.

1669

Q. 25. When Mr. Goldstein first called upon you to take that order, will you state whether or not he left any cigarettes with you at the time?

A. He did, yes.

Q. 26. How were those cigarettes packaged?

A. In a carton like this (witness indicates carton of Beech-Nut cigarettes) stands it like that and sets it on the counter like that (indicating).

Q. 27. Will you just describe what he did with the carton of Beech-Nut cigarettes when he left them with you?

A. I remember he gave us a carton for some of the cigarettes we bought, that is, he was doing it of his own free will. That is, just like giving it away for giving a good sized order.

1670

Q. 28. You gave him a good sized order for cigarettes?

A. Yes.

Q. 29. Did he himself place the card on the counter as you have described it?

A. Yes, sir, he placed the card on the counter.

Q. 30. That is that yellow sign or card?

A. A card like this here (witness takes yellow card and sticks in the end of carton of cigarettes).

1671

Q. 31. When Mr. Goldstein sold you this first order of Beech-Nut cigarettes, will you state whether or not he left any sort of receipt or anything of that sort?

A. Well, that was an order like this here that he left with us (witness handles a yellow slip B of Defendant's Exhibit 10), and this one he signed and turned over to the jobber. We had these two slips, there was a carbon in between, and signed the white one on top. That had the jobber's name mentioned on top here and the amount of cigarettes we ordered. And he left this one with us so we would know what we ordered (witness indicating B of Defendant's Exhibit 10).

- 1672 Q. 32. Whose name appears at the top of those slips?  
A. That is Lorillard's.  
Q. 33. Did you pay in cash for those cigarettes at the time?  
A. No, we paid the jobber.  
Q. 34. But he left you the cigarettes and the receipts?  
A. Yes.  
Q. 35. Do you know of a store kept by William Weigel at 810 Wells Street, Milwaukee?  
A. Yes, sir.  
Q. 36. How far from your place of business is that store?  
1673 A. About three and a half blocks.  
Q. 37. Is that the same Wells Street your store is on?  
A. Yes, sir.

(Direct Examination closed.)

*Cross Examination.*

By Mr. Johnson:

- X-Q. 38. What is your business address?  
A. 420 Wells Street.  
X-Q. 39. What kind of business, retail or wholesale,  
1674 do you do in your store?  
A. Tobacco, cigarettes and candies.  
X-Q. 40. Retail or wholesale?  
A. We wholesale everything and retail everything.  
X-Q. 41. Do both kinds of business?  
A. Yes, we do both kinds of business in the same place.  
X-Q. 42. Same store?  
A. Yes.  
X-Q. 43. Same clerks?  
A. Same.

X-Q. 44. Both wholesale and retail business? 1675

A. Yes, sir.

X-Q. 45. About how large is your store, just roughly?

A. It is a small place, twice as big as this room here.  
(Indicating).

X-Q. 46. About how many feet square, would you say?

A. It is about twenty feet wide and thirty-five feet long, that is a rough guess.

X-Q. 47. How many clerks do you have in there?

A. There is three of us in the store always; that is, changing hands right along.

X-Q. 48. You have three clerks there regularly?

A. No, not regularly, one is there always, but there is three of us working there. 1676

X-Q. 49. About how many customers come into your store each day?

A. That I couldn't say.

X-Q. 50. Approximately?

A. Maybe five hundred, maybe less, maybe more. That I couldn't say offhand how many.

X-Q. 51. Do you keep a cash register?

A. Yes, we do.

X-Q. 52. Do you take off the total number of sales at the end of a day?

A. Well, we don't pay attention to that. I never look at how many come in a day. 1677

X-Q. 53. Then do these five hundred—

A. (Interrupting) I mentioned approximately—that is a rough guess.

X-Q. 54. These five hundred approximate people keep you pretty busy, do they?

A. Oh, pretty busy, yes.

X-Q. 55. Do you have much time to talk with each one of them?

A. Once in a while, yes.



1678 X-Q. 56. But as a rule do you exchange remarks with the customer?

A. Yes, sometimes. If a customer starts to talk to me I would give him an answer, whatever he wants to know.

X-Q. 57. But is it the usual thing for a customer to ask you who makes the article he is buying?

1679 A. Well, that I don't say, none ever mentioned to me, maybe it was once or twice, whether it is made by the same people make the Beech-Nut cigarettes, the gum was made by the same people or—well, I always knew that. I explained it to him. Maybe there is one or two since I have been in business there asked if it was the same people made the Beech-Nut cigarette that made the Beech-Nut gum, but I never had that asked very often.

X-Q. 58. Do you remember what these you mentioned who did ask—do you remember what they said?

A. I remember a fellow once asked me, he said, "Is this the same people is making the Beech-Nut gum?" I said, "Lorillard only makes tobacco, don't make any gum."

X-Q. 59. Do you remember that man's name?

A. No, I couldn't say, I don't remember that.

X-Q. 60. Do you remember what anyone else said?

1680 A. I don't think I ever had any conversation—such conversation with anybody else.

X-Q. 61. How does the customer as a rule make his purchases? Does he walk in and say, "I want a package of Camels", put down his money and walk out again?

A. Yes, and I gave him a package of Camels and he walked out. If he would say anything to me I talked to him, yes, but the most of them walked away. If he doesn't say anything, I don't say anything to him.

X-Q. 62. If he doesn't say anything, do you know what he is thinking about as to who made the article he is buying?

A. I don't know whether he knows it or not. 1681

X-Q. 63. You are not a mind reader, are you?

A. No.

X-Q. 64. In most cases, then, you don't know, do you, who the people think made the Beech-Nut cigarettes or any article they buy, do you?

A. That I couldn't say, whether they know it or not.

X-Q. 65. That is, you don't remember, do you?

A. I don't say I don't remember. I don't know. If anyone asks me a question if I know if the people know what they are buying, who makes the article they are buying, I don't know if the man knows who makes the cigar he buys.

1682

X-Q. 66. Did you make any attempt to remember how many people were asking about whether the Beech-Nut cigarettes were made by the Beech-Nut gum people?

A. Why, I think it was only one or two, when the cigarettes came out, that ever asked me if it was a different company, that is the consumers. If they ever asked, it was one or two. Of course, the Beech-Nut sign was on the window, "Made by Lorillard." There wouldn't be any sense for any man to ask me who made the Beech-Nut cigarettes because it is right on the sign.

By Mr. Johnson: Objection to this answer as not responsive. 1683

Will you read the question.

(Last question read)

By Mr. Johnson:

X-Q. 67. Did you make any attempt to remember how many people asked you about the Beech-Nut cigarettes and tobacco?

A. No, sir.

1684 X-Q. 68. Did anyone ask you to make a note of that?

A. No, sir.

X-Q. 69. Then you have no reason to remember one way or the other, have you, as to that?

A. No reason to remember? What do I know whether Lorillard had any trouble with us here? If there was any such thing I would put it down and take the names and show it to you.

X-Q. 70. Do you remember when it was you made this first purchase of Beech-Nut cigarettes?

A. That was in the year 1921, around in August, if I am not mistaken, between August and July. Either it  
1685 was July or August, I don't remember right off, but I remember the time they came here.

X-Q. 71. About how many were you able to sell at that time per week, say?

A. In retail or wholesale?

X-Q. 72. We are speaking of retail now.

A. Probably could sell about a thousand a week, or two thousand.

X-Q. 73. Is that a thousand cigarettes or a thousand packages?

A. A thousand cigarettes, that makes fifty packages.

X-Q. 74. What proportion of your business is whole-  
1686 sale? Half of it or three quarters?

A. Ninety per cent.

X-Q. 75. —is wholesale?

A. Yes, and probably more.

X-Q. 76. How did the Beech-Nut cigarettes sell in your store after that, retail, how many a week?

A. Well, not very many, we didn't sell very many.

X-Q. 77. Did the sales increase?

A. They were sold good for a while when they first came out and then dropped off. Now they don't sell at all.

X-Q. 78. Could you tell whether the same customers were coming back to buy again retail after their first purchases? 1687

A. Well, some, yes. Some they didn't come back.

X-Q. 79. Did you hear any remarks as to how they liked the cigarettes?

A. Well, just like anybody else, some they like it and some they didn't like it.

X-Q. 80. Are you selling them now?

A. I don't think we have any of them now. We don't sell none.

X-Q. 81. When did you last sell any quantity of them?

A. About a year ago. . 1688

X-Q. 82. You haven't sold very many in the last year, is that it?

A. No.

X-Q. 83. Did you know before you bought these first Beech-Nut tobacco and cigarettes for the first time that they were Lorillard products?

A. What? The cigarettes?

X-Q. 84. Both of them, when you first bought the Beech-Nut scrap tobacco did you know it was a Lorillard product before you got it into your store?

A. Yes, sir.

X-Q. 85. Did you know the same thing at the time of your first purchase of cigarettes? 1689

A. Absolutely.

Cross Examination closed.

*Re-direct Examination.*

By Mr. Cavanagh:

R-D Q. 86. When the cigarettes first came out, if you had had a lot of inquiries from customers as to whether

1690 it was made by the Beech-Nut Packing Company, or the gum people, you would have remembered?

A. If there were a lot of them I would have remembered that.

R-D. Q. 87. How does the Beech-Nut scrap tobacco sell in your store?

A. It sells fair.

R-D. Q. 88. —in comparison with the other scrap brands how does it sell?

A. Good. Best of all the other scrap tobaccos.

Re-direct Examination Closed.

1691

*Re-Cross Examination.*

By Mr. Johnson:

R-X Q. 89. In regard to the order slips which you spoke of on direct examination, did you say that the jobber's name appears at the top?

A. The jobber's name appears where it says, "Jobber". The manufacturer's name appears on top.

R-X. Q. 90. You buy from jobbers, too, don't you?

A. Yes, sir.

1692

R-X Q. 91. Are you familiar with tobacco jobbers' order slips?

A. I am.

R-X Q. 92. Do most jobbers have an order slip somewhat of this same kind?

A. Well, some they have and some they have not, but none with Lorillard's name on it. They got their own name on it.

R-X. 93. Did they have their name printed at the top?

A. Yes.

R-X. 94. Same as Lorillard's name is printed at the top here (indicating)? 1693

A. Yes, some jobbers they have.

Deposition closed.

Signature waived.

JOHN W. SMITH, a witness called on behalf of Defendant, being first duly sworn, in response to interrogatories propounded to him by Mr. Cavanagh, deposes and says, as follows:—

*Direct Examination.*

1694

Q.1. Please state your name, age, residence and occupation.

A. John W. Smith, age 27, residence 1206½-9th Street, Milwaukee, Wisconsin, occupation window trimmer.

Q.2. Are you ever employed by the P. Lorillard Company, tobacco manufacturers?

A. Yes, sir.

Q.3. Where?

A. At the Milwaukee office.

Q.4. Here in Milwaukee, Wisconsin?

1695

A. Yes, sir.

Q.5. How long were you employed by the P. Lorillard Company?

A. Approximately three years.

Q.6. What were your duties with the P. Lorillard Company?

A. Window trimmer.

Q.7. Just what did you do in that line?

A. Well, putting in special display with the Lorillard Tobacco Company.

1696 Q. 8. In the windows in various stores?

A. Yes.

Q. 9. Were you employed by the P. Lorillard Company when the campaign of putting the Beech-Nut cigarettes on in the state of Wisconsin or Milwaukee territory was started?

A. I was in their employ before that and during the time they opened up the campaign.

Q. 10. About when was it they opened the campaign?

A. Well, I think about—during the month of September, I remember that. I am pretty sure it was September.

1697 Q. 11. 1921?

A. 1921.

Q. 12. Do you know Mr. Goldstein?

A. Yes, sir.

Q. 13. Was he with the Lorillard Tobacco Company at the opening of their campaign?

A. Yes, sir.

Q. 14. Here in Milwaukee?

A. In Milwaukee.

Q. 15. Did you do any work under him?

A. Not directly under him. I was in a different department from Mr. Goldstein's department.

1698 Q. 16. Will you state whether or not you trimmed any windows with Beech-Nut signs?

A. Yes, sir, I have, that is if it was included in the special display gotten out by the window display department.

Q. 17. Did you ever attend any meetings or were you present at any meetings Mr. Goldstein had with his salesmen and listened to any instructions that he gave?

A. Well, I have been there in the morning when he has given instructions, packing up my things, getting ready to go, but never being directly in the meeting, just what I hear now and then from being around with him.

Q. 18. Can you state what you heard Mr. Goldstein tell these salesmen at these meetings just in your own words? 1699

A. Well, I heard him mention something about this here tangle in Beech-Nut gum and under no circumstances to give any dealer the impression they were connected with that company, the gum company.

Q. 19. You were present when Mr. Goldstein told this?

A. That was my understanding from what I heard.

Q. 20. At those meetings?

A. Yes, I was not paying particular attention to it because I was not on the selling force. 1700

Direct examination closed.

*Cross Examination.*

By Mr. Johnson:

X-Q. 21. Have you been a window trimmer all your business life?

A. No, sir, just since I started with the Lorillard Company.

X-Q. 22. What did you do before that?

A. Clerical work. 1701

X-Q. 23. With what companies?

A. With the New York Central Railroad before I was in the army.

X-Q. 24. What department of the company?

A. The commercial office in Milwaukee.

X-Q. 25. When did you enter the employ of the P. Lorillard Company?

A. 1919, I think the month of July.

X-Q. 26. Was that when you came out of the army?

A. Shortly after I came out of the army.



1702 X-Q. 27. Are you still with the P. Lorillard Company?

A. No, sir.

X-Q. 28. What are you doing now?

A. Same line of work, but with a different company.

X-Q. 29. Whom are you with now?

A. Well, it is about three companies consolidated together under the Cavala Tobacco Company of Chicago, and doing advertising for about three companies.

1703 X-Q. 30. But you are trimming for the tobacco trade, are you?

A. Yes, sir.

X-Q. 31. In these morning meetings that you spoke of on your direct examinations were you with the group of men that Mr. Goldstein was talking to?

A. I was in the same office, but only here and there, getting my stuff together, not listening directly to them.

X-Q. 32. Getting your trimming material together?

A. Getting my material together, walking around in the same room, couldn't help hearing different remarks.

X-Q. 33. Did you only hear remarks now and then?

A. You mean at that same morning I spoke of?

1704 X-Q. 34. Any one morning.

A. Well, I have heard a lot of remarks going on, which I probably don't remember.

X-Q. 35. Did you overhear such remarks more than one morning?

A. Well, there was a little session there probably a week long they talked about that more than any other time, I think, when this here first came up.

X-Q. 36. About what week was that?

A. I couldn't say.

X-Q. 37. Was it soon after the start of the special Wisconsin campaign on Beech-Nut cigarettes?

A. That I wouldn't remember. Might have been a month, might have been a couple of weeks. 1705

X-Q. 38. It was that fall, was it?

A. I don't know. As I say, not being under Mr. Goldstein I didn't pay any special attention to that, because I had my own work to do.

X-Q. 39. What did you hear Mr. Goldstein telling his salesmen?

A. If anybody was to ask him, that was the point, whether they were connected with this Beech-Nut gum company, to tell them positively not.

X-Q. 40. Did you ever go about through the city with Mr. Goldstein on his trips during this campaign? 1706

A. Well, I have made calls with him, because I have an automobile at one time and if he was going my way I would take him up there and probably wait a few minutes until he got through with the dealer he might be talking to, and then we would go on until he finally dropped off somewhere.

X-Q. 41. Did he ever direct your window trimming? I mean, at any particular store?

A. No, I can't say that he has.

X-Q. 42. Did he ever make suggestions how you should put your materials in the window?

A. Not that I remember of hearing him say. 1707

X-Q. 43. Are you familiar with the Beech-Nut gum and hard candies?

A. I don't understand your question.

X-Q. 44. Have you seen around about Milwaukee the Beech-Nut gum on sale and the mint packages?

A. I have seen the gum, I am sure of that, and I have an idea I have seen these little mint packages with their label on.

X-Q. 45. Similar packages?

A. Very similar.

1708 X-Q. 46. Have you seen those in any of the same stores in which you were trimming windows?

A. Well, I guess practically everybody had Beech-Nut gum, if they handled gum at all, and they usually handle gum in cigar stores in which I have been trimming.

X-Q. 47. Did you trim the window at the suggestions of the store where you went, in most cases? Would they suggest the kind of display you make in their window?

A. We would put our display in first and tell them we would put in merchandise they might wish to show in there with it, and they would hand me jars of cigars and tobaccos which I would put in with our display.

1709 X-Q. 48. Did you ever put in any Beech-Nut gum or hard candies or display matter in regard to them in the same window?

A. No, sir.

X-Q. 49. Were you ever asked to do that?

A. No, sir.

X-Q. 50. Have you ever gone into a store with Mr. Goldstein when he was placing cigarettes or his advertising material?

A. Well, yes, I have, but I can't say it was Beech-Nut. I know of different pieces of advertising he put up on Turkish cigarettes, but I do not remember any special time he put up Beech-Nut advertising. He may have taken in Beech-Nut cigarettes, but I couldn't say for sure whether Beech-Nut or Turkish.

Cross Examination Closed.

*Re-direct Examination.*

1711

By Mr. Cavanagh:

R-D. Q. 51. You have assisted Mr. Goldstein by decorating or putting in window display at places they sold Beech-Nut cigarettes here in Milwaukee, have you?

A. By assisting him, you mean?

R-D. Q. 52. Yes, you have put in the advertising in the stores where they sold the Beech-Nut cigarettes?

A. Yes, sir.

Re-direct Examination closed.

1712

*Re-cross Examination.*

By Mr. Johnson:

R-X. Q. 53. Have you ever been asked as you were going about, as to whether the same people that made the Beech-Nut cigarettes made the gum?

A. Never.

R-X. Q. 54. Have you ever heard any inquiries or comments about that?

A. No, because I have never been selling it, never been brought up to me.

1713

R-X. Q. 55. Have you been with people who were smoking Beech-Nut cigarettes and who were buying them?

A. Yes.

R-X. Q. 56. And you have never heard any inquiries or questions of that kind?

A. No, not that I know of.

Deposition closed.

Signature waived.

- 1714 MAURICE J. SCHIMMEL, a witness called on behalf of P. Lorillard Company, defendant, being first duly sworn, in response to interrogatories propounded to him by Mr. Cavanagh, deposes and says, as follows:

*Direct Examination.*

Q. 1. Please state your name, age, residence and occupation?

A. My name is Maurice J. Schimmel, age 23, reside at 1522 Fond du Lac Avenue, Milwaukee, Wisconsin, occupation salesman for P. Lorillard Company.

- 1715 Q. 2. How long have you been with the P. Lorillard Company, Mr. Schimmel?

A. About twenty-two months.

Q. 3. Are you acquainted with Mr. Goldstein of the P. Lorillard Company?

A. Yes, sir.

Q. 4. Were you connected with the P. Lorillard Company during the time the introductory campaign on the Beech-Nut cigarette was being conducted in Milwaukee and vicinity under Mr. Goldstein?

A. Yes, sir.

Q. 5. And about when was that?

- 1716 A. The campaign was about September 26th, I believe, it began.

Q. 6. What year?

A. 1921, I think. I am not positive.

Q. 7. Did you take any part in that campaign?

A. Yes, sir.

Q. 8. Just tell us in your own words what you did.

A. I called on retailers. I being the only one had a car, I called on retailers in the side streets and putting up advertising of different kind and description and sold these different dealers each a small quantity of

Beech-Nut cigarettes so we could give them a start on it, introductory item with them. 1717

Q. 9. When you called on a dealer or retailer to introduce the cigarettes, tell us just how you proceeded or what you did.

A. "Mr. So-and-so, I am a representative of the P. Lorillard Tobacco Company, doing a little advertising on Beech-Nut cigarettes. I would like to introduce this cigarette to the consumers. We are not trying to place a large quantity with you, just one carton." Then I would try to put up some advertising for the gentleman and proceed on my way to the next one.

Q. 10. If the dealer took a carton of the cigarettes, did you give him any receipt or anything of that sort? 1718

A. Yes, sir.

Q. 11. Are these receipts made out on the blanks like I show you (showing order blank)?

A. Yes, sir.

Q. 12. The white blank marked "A" and the yellow blank marked "B" and the tissue paper sheet?

A. Yes, sir.

Q. 13. When you went into the store what did you carry with you?

A. My sample case containing the cigarettes and advertising.

Q. 14. You always had those with you when you went in the store? 1719

A. Yes, sir.

Q. 15. Did you ever attend any meetings at which Mr. Goldstein gave any instructions to the crew?

A. Yes, sir.

Q. 16. How often?

A. Quite often.

Q. 17. Well, approximately? Once a week or a couple of times a week or what?

A. Most every day, I might say.

1720 Q. 18. What instructions did Mr. Goldstein give you at those meetings?

A. My instructions were that upon entering a store I was to introduce myself as representative of the P. Lorillard Company, manufacturers of Beech-Nut cigarettes and Beech-Nut tobacco and a few Turkish cigarettes, and under no circumstances were we to mention Beech-Nut Packing Company's articles with ours.

Q. 19. Did you ever have any of your customers ask you if these Beech-Nut cigarettes or the Beech-Nut scrap, was made by the Beech-Nut Packing Company, the same people make the gum?

1721 A. Very little, sir, if any.

Q. 20. Do you recall any?

A. No, sir, I don't think I do.

Q. 21. How many customers did you visit a day, approximately?

A. About twenty.

Q. 22. And for about how long a period of time did you visit these customers? That is, how long did your campaign extend, just approximately?

A. Approximately three months.

1722 Q. 23. Will you state whether or not you ever told or intimated to any person that Beech-Nut cigarettes were made by the same people who made the gum?

A. No, sir.

Q. 24. What kind of advertising was it that you put up in these stores and that you carried with you to put up in the stores?

A. Posters, also enamel signs.

Q. 25. Were they window signs or wall signs?

A. The enamel signs were for outside walls and the displays we carried with us also for the windows.

(Direct Examination Closed.)

*Cross Examination.*

1723

By Mr. Johnson:

X-Q. 26. Are you still in the employ of the P. Lorillard Company?

A. Yes, sir.

X-Q. 27. What were you doing before you joined them about two years ago, as you say?

A. I represented the American Tobacco Company.

X-Q. 28. How long were you with them?

A. Two months.

X-Q. 29. What did you do before that?

A. I was a shipping clerk.

1724

X-Q. 30. In what kind of house?

A. Tool manufacturing concern.

X-Q. 31. Were you in the tobacco trade before that?

A. No, sir.

X-Q. 32. How long had you been with the P. Lorillard Company at the time this introductory campaign on the Beech-Nut cigarettes began?

A. About seven or eight months.

X-Q. 33. How long did it continue in this district?

A. About three months.

X-Q. 34. Beginning when?

A. September 26th, 1921, continued until about December 16th of the same year.

1725

X-Q. 35. To be concluded about December?

A. About that time. I don't recall just when it did conclude because our vacation came in at that time and that is all we did on that.

X-Q. 36. When you were just describing in direct examination what you did and said when you entered a dealer's establishment to sell him cigarettes, you do not mean that you did exactly that thing in every case, do you?

A. Yes, sir, in every case.



1726 X-Q. 37. Just exactly the procedure you stated?

A. Yes, sir.

X-Q. 38. Were you able to say that you always did that very same thing?

A. Yes, sir.

X-Q. 39. Said the same things?

A. With a few words thrown in—a few other words thrown in here and there, but always introducing myself the same way.

X-Q. 40. You can't remember of one instance where you parted from that procedure to any extent?

A. No, sir.

1727 X-Q. 41. Did you ever receive any written instructions from Mr. Goldstein telling you to be careful not to put these Beech-Nut cigarettes forward as seeming to be the product of the Beech-Nut Packing Company?

A. No, sir.

X-Q. 42. You never received any such written instructions?

A. No, sir.

X-Q. 43. Did you ever receive such written instructions from the P. Lorillard Company home office?

A. No, sir.

1728 X-Q. 44. Through what period of time did these meetings that you speak of, when Mr. Goldstein talked to you, take place?

A. Every morning.

X-Q. 45. Beginning about when?

A. Beginning right at the time we first had begun our campaign on Beech-Nut cigarettes.

X-Q. 46. You mean September 26th?

A. September 26th, yes, sir.

X-Q. 47. And through what period did those meetings run?

A. Until practically the end of the campaign and on to the next year too. It has been mentioned to the

crew very often we should not mention Beech-Nut Packing Company's products with Lorillard's. 1729

X-Q. 48. When did Mr. Goldstein leave this district?

A. The first of 1922.

X-Q. 49. His meetings did not run into that year, you don't mean that?

A. No.

X-Q. 50. You mean his successor continued the meetings?

A. Yes, sir, his successor.

X-Q. 51. How often did you say those took place?

A. When Mr. Goldstein was on we received those instructions most every morning, approximately every morning. I won't say very often, but quite often, I might say, in the morning before we left the office we were carefully instructed not to mention Beech-Nut Packing Company with Lorillard's name. 1730

X-Q. 52. How long did you spend in his office as a rule before getting out in the morning?

A. We would get down to the office at eight and we would leave between eight thirty and a quarter to nine, never later than a quarter to nine. We were always out at a quarter to nine.

X-Q. 53. These meetings were rather informal then, I suppose?

A. Informal, yes sir. 1731

X-Q. 54. Did he go through the same ceremony every morning, tell you these things that you were describing in direct?

A. Yes, sir.

X-Q. 55. Did he tell you in those morning meetings that the Beech-Nut cigarettes were made by the P. Lorillard Company?

A. Yes, sir.

X-Q. 56. What was the necessity of telling the Lorillard employees that their own company made the product?

1732 A. He didn't say it in just those words you use, he didn't mention those words. He did say we weren't to mention Beech-Nut Packing Company's name with Lorillard's products. We were not to use that Beech-Nut Packing Company's label with Lorillard's label in calling on these dealers.

X-Q. 57. Did you ever hear Mr. Goldstein refer to the Beech-Nut cigarettes as one of the Beech-Nut line?

A. No, sir.

X-Q. 58. Did you ever hear any of your brother salesmen refer to the Beech-Nut cigarettes as one of the Beech-Nut line of products?

1733 A. No, sir.

X-Q. 59. You have gotten about a good deal, haven't you, Mr. Schimmel, in this Milwaukee district during that campaign and since?

A. Beg pardon?

X-Q. 60. You have moved about a good deal among the dealers, among the public?

A. Yes, sir.

X-Q. 61. Have you heard any question asked or any comments or inquiries as to whether the Beech-Nut cigarettes and scrap tobacco were made by the people that made the gum?

1734 A. Very little.

X-Q. 62. But have you heard a few?

A. Once or twice, but very seldom. I did hear once in a while something.

X-Q. 63. Can you tell any of the things that you heard?

A. No, sir.

X-Q. 64. Did you make any attempt at that time to remember these incidents?

A. No, sir.

X-Q. 65. Did anybody ask you to make a note of such incidents?

A. No, sir.

1735

X-Q. 66. You were very busy at that time, weren't you?

A. Yes, sir.

X-Q. 67. Don't you mean that you don't remember any such inquiries except the few exceptions you have mentioned? You mean you don't remember?

A. I don't remember.

X-Q. 68. Do you know the C. H. Beese grocery store on Murray Avenue?

A. No, sir.

X-Q. 69. Did you ever hear of it?

A. No, sir.

1736

X-Q. 70. The C. H. Beese grocery store, 701 Murray Avenue?

A. No, sir.

X-Q. 71. You never went there?

A. No, sir.

X-Q. 72. Did you keep a memorandum or note book of the places you called during that campaign?

A. No, sir.

Cross examination closed.

*Re-direct Examination.*

1737

By Mr. Cavanagh:

R-D Q. 73. You were asked on cross examination about Mr. Goldstein going through a certain ceremony of schooling the salesmen. Will you please state whether or not he was on that occasion instructing you how to approach people?

A. Yes, sir, to a certain degree.

R-D Q. 74. In what way?

A. To absolutely be sure to mention that we were representatives of the P. Lorillard Company, selling the

- 1738 Beech-Nut cigarettes and Beech-Nut tobacco, manufacturers of the Beech-Nut tobacco.

R-D Q. 75. Did he mention you should speak of any other Lorillard brands?

A. No, sir.

R-D Q. 76. What brands does Lorillard manufacture in the Turkish lines?

A. Helmars, Turkish Trophies, Dieties and Moguls.

R-D Q. 77. Are all of those well-known brands?

A. Yes, sir.

R-D Q. 78. Did you ever sell any of them?

A. No, sir.

- 1739 N-D Q. 79. You never sold the Turkish brands?

A. No, sir.

R-D Q. 80. What do you sell chiefly?

A. Beech-Nut cigarettes and Beech-Nut scrap tobacco at the present time.

R-D Q. 81. Who do you work under now?

A. Mr. Frank Hopewell.

R-D Q. 82. You say that on one or two occasions you might have heard people ask you, "Were the cigarettes made by the gum people or Beech-Nut Packing Company?" What did you tell them?

- 1740 A. Why, they would say to me, "Well, we sell your Beech-Nut gum", and I would emphatically deny it and say, Beech-Nut gum was not made by P. Lorillard Tobacco Company, it was made by the Beech-Nut Packing Company.

R D Q. 83. How often would that happen?

A. Very few times.

R-D Q. 84. If it had happened very often would that have impressed itself on you that people were making those inquiries?

A. It might.

R D Q. 85. If people asked you the same thing one

hundred times a day or one hundred times a week would 1741  
you remember it or would you not?

A. Yes, sir.

R-D Q. 86. I asked you, would you or would you not.  
Will you state whether or not?

A. I would.

R-D Q. 87. Would have what?

A. It would have impressed itself upon me.

R-D Q. 88. Will you state whether or not you have  
ever mentioned to customers those famous Turkish  
brands of Lorillard Company?

A. I have, sir.

R-D Q. 89. In what way?

1742

A. The dealer would ask me if we made any other  
well-known cigarette and I would naturally mention  
Murads and Helmars and so on.

Re-direct Examination Closed.

*Re-cross Examination.*

By Mr. Johnson:

R-X Q. 90. What was your district during this Beech-  
Nut cigarette campaign?

A. The territory west of Third Street, I would say, 1743  
or the northwest end of town.

R-X Q. 91. Was that entirely referring to Milwaukee?

A. Yes, sir.

R-X Q. 92. Did you get outside of Milwaukee very  
far?

A. No, sir.

R-X Q. 93. Do you know what territories the other  
members of the crew had?

A. No, sir, I don't remember.

R-X Q. 94. When Mr. Goldstein was going through  
this morning exercise of his while you salesmen were in

1744 his office, did he tell you to emphasize the quality of the Beech-Nut cigarettes in presenting them to the dealers?

A. I don't remember.

R-X Q. 95. Did he tell you to emphasize that the Beech-Nut cigarettes were another of the many other brands?

A. No, sir, he never said.

Mr. Cavanagh: Other brands of what? The question is objected to as indefinite.

1745 A. He never mentioned anything about—he never told us to say anything about the quality of the other brands, if that is what you are arriving at.

R-X Q. 96. (By Mr. Johnson) As you have been selling the goods of the P. Lorillard Tobacco Company have you found that the people wanted a certain brand, such as the Beech-Nut cigarettes or the Moguls or the Murads, or did they want a Lorillard brand?

A. They would call the brand they wanted, they would call it by name.

Re-cross Examination Closed.

*Re-direct Examination.*

1746

By Mr. Cavanagh:

R-D Q. 97. Will you please state whether or not in these morning instructions or meetings he told you to emphasize that the Lorillard Company made other famous brands and mention them by name?

A. He did not tell us to emphasize the fact we made other brands. However, he did say, where it was necessary to sort of impress upon the quality of Murads and Helmar cigarettes and in this way bring forth the point that Beech-Nut cigarettes were of good quality.

R-D Q. 98. So he did mention these other brands, such as Murads and Moguls at the time he was instructing you about the Beech-Nut, didn't he? 1747

A. Occasionally, yes, sir.

Mr. Cavanagh: That is all.

Mr. Johnson: That is all.

Deposition Closed.

Signature waived.

(An Adjournment is here taken to ten o'clock January 31st, 1923)

January 31, 1923, 10:00 A. M.

1748

Met pursuant to adjournment, parties present as before.

DANIEL PAICOPOULOS, a witness produced in behalf of the defendant, being first duly sworn, in response to interrogatories propounded to him by Mr. Preston, deposes and says as follows:

Q. 1. Will you please state your name, age, residence and occupation?

A. Dan Paicopoulos, thirty-seven years of age, reside at 722 Wells Street, occupation cigarettes and tobacco. 1749

Q. 2. What is the address of your store here?

A. 405 Wells Street.

Q. 3. How far is your store from 810 Wells Street?

A. About five blocks—four blocks.

Q. 4. Do you sell Beech-Nut scrap tobacco?

A. Yes, sir, I do.

Q. 5. How long have you handled that?

A. Ever since I am in the business, about twelve years.

Q. 6. Do you handle Beech-Nut cigarettes?



1750 A. Yes, sir.

Q. 7. And how long have you handled them?

A. For more than a year.

Q. 8. Do you know what company makes Beech-Nut scrap tobacco and Beech-Nut cigarettes?

A. Sure, I do, P. Lorillard.

Q. 9. Are you handling Beech-Nut chewing gum?

A. I do once in a while.

Q. 10. Do you know what company makes that?

A. No, really I don't know.

Q. 11. Have you ever been under the impression that Beech-Nut chewing gum was made by the same company makes the Beech-Nut scrap tobacco and Beech-Nut cigarettes?

1751

A. No, sir.

Q. 12. Have you ever heard any remarks or inquiries among your customers which indicated in any way that they were under the impression that Beech-Nut chewing gum was made by the same company makes the Beech-Nut tobacco and the Beech-Nut cigarettes?

A. No.

Q. 13. And if you had heard a great many of those remarks do you think you would have remembered it?

A. Well, sure I would. I can't remember anything like that, I never heard anything like that.

1752

Q. 14. Do you remember who it was first sold you Beech-Nut cigarettes?

A. Well, if I am not mistaken it was Mr. Goldstein.

Q. 15. When Mr. Goldstein introduced those Beech-Nut cigarettes to you did he tell you that he was a representative of the Lorillard Tobacco Company?

A. Yes.

Q. 16. Did he make any statement which in any way could have led you to believe that the Beech-Nut cigarette was in any way connected with the Beech-Nut gum?

A. Never mentioned anything like that, never mentioned any Beech-Nut gum. 1753

Q. 17. Did Mr. Goldstein have any advertising matter with him when he introduced those cigarettes into your store?

A. Yes, he put up posters in my window.

Q. 18. He put some posters in your window?

A. Yes.

Q. 19. Did you buy any Beech-Nut cigarettes from him at that time for cash, or through the jobber?

A. The first I bought was from the jobber, not for cash, but I gave the order through the jobber.

Q. 20. Did Mr. Goldstein leave you a duplicate of the order you gave him on a blank like the one I now show you, a yellow order slip, (showing same to witness)? 1754

A. He gave me a copy of this.

Q. 21. And whose name appears on the top of that blank?

A. "P. Lorillard."

Q. 22. Is your Beech-Nut scrap tobacco a good seller?

A. Sure, it is a good seller.

Q. 23. Is it as good a seller as any other scrap tobacco that you carry?

A. I don't handle anything else but Beech-Nut scrap.

Q. 24. Beech-Nut is the only scrap tobacco you handle? 1755

A. I have the other, but they don't go as fast.

Direct Examination closed.

*Cross Examination.*

By Mr. Johnson:

X-Q. 25. Mr. Paicopoulos, is your business wholesale or retail?

1756 A. Wholesale and retail.

X-Q. 26. About what proportion of it is wholesale, would you say?

A. Well, I sell wholesale outside myself and retail here in the store, but I sell the most wholesale out.

X-Q. 27. Do you make sales in the front of the store yourself?

A. No, I deliver stuff, I sell stuff outside to the other stores.

X-Q. 28. Is this one of a chain of stores?

A. What is that?

X-Q. 29. Have you other stores beside this one?

1757 A. No, I say I sell to my customers outside wholesale and retail, retail I sell whatever comes here. Wholesale I go out and get orders as I deliver.

X-Q. 30. How many men have you in the store in which you sell retail?

A. My brother Louis and two of my brother-in-laws.

X-Q. 31. How many do you keep in the store at one time usually?

A. Usually one.

X-Q. 32. And of the business that you do in that front store, about what per cent. of it would you say is wholesale? One-half or three-quarters?

1758 A. Wholesale is three-quarters. I don't do much retail here.

X-Q. 33. About what is the size of your store in the front part, just roughly, how many feet long and wide?

A. Oh, I never measured it.

X-Q. 34. Just roughly, don't you know whether it is twenty by twenty or what it is?

A. I never pay any attention to it. If you walk out you can measure it, I can't say.

X-Q. 35. I would just like to have you say, because you are the owner.

A. About twenty by twenty. I am not sure, I never 1759  
measured it.

X-Q. 36. About how many customers come in in a  
day, retail customers?

A. About two hundred or three hundred.

X-Q. 37. That keeps you pretty busy waiting on them?

A. Oh, not much.

X-Q. 38. Do you have much time to talk to each cus-  
tomer?

A. I talk to the customer for what? They come in  
and say, "Give me a package of this" and I hand them  
the stuff and they go out. If I know the fellow and they  
want to talk to me I can talk as much as they want to. 1760

X-Q. 39. How long have you been selling Beech-Nut  
serap tobacco?

A. Since I am in business, nine or ten years.

X-Q. 40. During that time since you have been sell-  
ing Beech-Nut serap tobacco and Beech-Nut cigarettes  
have you heard any one asking you who made them or  
whether the same people made them that made the Beech-  
Nut chewing gum or peanut butter?

A. No.

X-Q. 41. You never heard anyone asking that or talk-  
ing about it?

A. No. 1761

X-Q. 42. Did you make any attempt to remember  
such questions?

A. If somebody asked me I told them P. Lorillard,  
but I can't remember anybody asking me about that.

X-Q. 43. Then when you say you didn't hear any  
such questions or remarks you mean you don't remem-  
ber of them now, is that it?

A. I can remember nobody asking such a question.

X-Q. 44. When did you first buy Beech-Nut cigar-  
ettes?

1762 A. A little over a year, I think, at the time they first come on the market. It was over a year, I think. If I look at the bill I can find it.

X-Q. 45. Who first came in to offer them to you for sale?

A. Mr. Goldstein.

X-Q. 46. Did you buy some the first time any man came in to offer them to you?

A. They gave me the price and I bought them.

X-Q. 47. Did you buy them the first time a salesman came in with them?

A. Yes.

1763 X-Q. 48. You are sure that is Mr. Goldstein who came in first?

A. Mr. Goldstein was the man who sold me the first lot.

X-Q. 49. Did he come into your store?

A. Yes.

X-Q. 50. When was that?

A. Well, I can't remember, but it was a little over a year anyway. I can't remember exactly the day.

X-Q. 51. But you do remember, do you, it was Mr. Goldstein who came into your store the first time that you had these cigarettes offered to you?

1764 A. Yes.

X-Q. 52. Did you know Mr. Goldstein at that time?

A. I know him.

X-Q. 53. You say you knew him?

A. Yes.

X-Q. 54. Do you know who he represented?

A. Yes.

X-Q. 55. Who?

A. P. Lorillard.

X-Q. 56. Then before you got the Beech-Nut cigarettes for the first time you knew that they were made by the P. Lorillard Company, did you?

A. Yes.

1765

X-Q. 57. Did you know they were made by the Lorillard Company before you ever saw a package of them?

A. Before I saw them?

X-Q. 58. Before you ever actually saw a package of the cigarettes.

A. Before I saw them I don't know who made them, but at the time they represented the Beech-Nut cigarettes they told me they were made by the P. Lorillard people, and then I knew. Before I had them how can I know?

X-Q. 59. But I mean, before you saw a package of the cigarettes did you know that these Beech-Nut cigarettes that were on sale—

1766

A. (Interrupting.) Yes, I knew they were made by P. Lorillard.

X-Q. 60. Now these order slips which Mr. Preston has shown you, did Mr. Goldstein leave one of these yellow duplicate slips with you at that time?

A. Yes.

X-Q. 61. Have you bought anything since then from P. Lorillard Company salesmen?

A. I buy, yes.

X-Q. 62. Have they always left with you one of these yellow order slips?

1767

A. Yes. (Producing paper) I think I have one here now. When I give an order to a salesman they leave one like this (indicating), this is a different company. One he sent to the jobber and my jobber sent me the stuff and I check it up to see if that is the way I gave it to them.

X-Q. 63. You buy from tobacco jobbers some time too, don't you?

A. Well, not all of the time.

X-Q. 64. Who are the Borden Sales people in New York?

1768 A. This is the first order I gave them.

X-Q. 65. Are they tobacco jobbers?

A. No, this is candy, a different line of business, this is all candy.

X-Q. 66. When you have bought from jobbers have you had order slips left with you similar to this? Not just like this, I mean, but similar to this with the jobber's name at the top?

A. Yes.

X-Q. 67. Do these tobacco jobbers duplicate order slips have their own name at the top of it?

A. Yes.

1769 X-Q. 68. How did the Beech-Nut cigarettes sell after you put them in?

A. They were good sellers.

X-Q. 69. About how many a week did you sell at first?

A. I sell them at least today yet.

X-Q. 70. About how many a week did you sell during the first part of the time you were selling them?

A. I can't understand that.

X-Q. 71. Do you know about how many Beech-Nut cigarettes a week you sold during the first part of the time when you put them in stock?

A. I can't remember.

1770 X-Q. 72. Did your sales increase?

A. Not now.

X-Q. 73. No, but I mean after the first did the sales increase?

A. Yes.

X-Q. 74. For about how long?

A. Well, they increased for two months, but they don't go now like they started. They don't go as fast as they started. When they put them in they were selling good, after a couple of months don't sell like usual.

X-Q. 75. Did you notice whether many of the same people who came into your store bought a second time

after they had bought once of these Beech-Nut cigarettes? 1771

A. I can't remember.

X-Q. 76. Did you hear any of them say what they thought of them?

A. Well, I can't remember that now.

X-Q. 77. About how many a week are you selling now?

A. Now the only thing—I don't sell much now.

X-Q. 78. Can you say about how many? One carton a week?

A. Sometimes I sell ten cartons a week and sometimes I don't sell in two weeks ten cartons. When I get orders I sell it, if I don't get orders how can I sell it?

1772

X-Q. 79. Do you sell Camel cigarettes?

A. Sure, I do.

X-Q. 80. Who makes the Camels?

A. R. J. Reynolds.

X-Q. 81. Do you sell Lucky Strikes?

A. Yes.

X-Q. 82. Who makes those?

A. American.

X-Q. 83. Have you sold many Camels?

A. Plenty.

X-Q. 84. A great many?

A. Yes.

1773

X-Q. 85. Have you handled the packages yourself?

A. Yes.

X-Q. 86. What is on a package of Camel cigarettes underneath the Camel? What is printed on the Camel package underneath the Camel?

A. The name of the company who made it.

X-Q. 87. Have you sold many Lucky Strike cigarettes?

A. Yes.

X-Q. 88. Have you handled the packages yourself?

A. I handle some myself too,—plenty.



1774 X-Q. 89. What is on the Lucky Strike package underneath the red panel?

A. It says "Made by American Tobacco Company."

X-Q. 90. Have you handled many Fatima cigarettes?

A. Yes, not so many of them as Camels and Lucky Strikes.

X-Q. 91. Have you handled the packages yourself?

A. Yes.

X-Q. 92. What is on the Fatima package underneath the picture of the lady and the scimitar?

A. The name of the people who made it.

X-Q. 93. You sell any of the Beech-Nut Packing Company's products?

1775 A. Sometimes.

X-Q. 94. What ones have you sold?

A. The Beech-Nut gum.

X-Q. 95. Anything else? Mints or lemon drops or anything like that?

A. No.

(Cross Examination Closed.)

*Re-direct Examination.*

By Mr. Preston:

1776

R-D Q. 96. Will you please state whether or not you have always known ever since you handled the Beech-Nut scrap tobacco and Beech-Nut cigarettes what company made them?

A. P. Lorillard.

R-D Q. 97. Is a good deal of your time spent among the retail tobacco dealers in the city of Milwaukee?

A. Yes, sir.

R-D Q. 98. Do you spend considerable time in your own retail store here?

A. Yes.

R-D Q. 99. Have you ever in your experience, as far 1777  
as your memory goes, heard any remarks which indicated that people were under the impression that Beech-Nut tobacco and Beech-Nut cigarettes were made by the same company that made Beech-Nut gum?

Mr. Johnson: Objected to as grossly leading.

A. No.

Re-direct examination closed.

*Re-cross Examination.*

1778

By Mr. Johnson:

R-X Q. 100. You have already said, Mr. Paicopoulos, that in most cases your customers come in and ask for what they want and pay their money, take the package and go out?

A. Yes.

R-X Q. 101. Is that correct?

A. Yes.

R-X Q. 102. In most cases nothing is said, is that correct?

A. What?

1779

R-X Q. 103. In most cases they don't say anything about who they think make the article they are buying?

A. If anybody asks me I tell them what I know.

R-X Q. 104. But in most cases do they say anything?

A. Well, they tell me that time they ask me if it is a new cigarette who it is made by, they ask me, many of my customers, but after that nobody appeared to ask anything about Beech-Nut who make it, they don't pay any attention to it.

R-X Q. 105. Then, Mr. Paicopoulos, you have had

1780 questions of this kind in regard to the Beech-Nut cigarettes, have you?

A. I told you, when they come they ask me who made it, because it is a new cigarette, they want to know who made it. They ask me who made it, I tell them P. Lorillard. That is alright by that time and then nobody asked anything.

R-X Q. 106. And with the ordinary customer, as you have already said, he walks in up here at the counter and says he wants a package of Camels, let us say, puts down the money, you give him the package and he turns around and walks out, is that right?

1781 A. Yes.

R-X Q. 107. But you can't tell from looking at his face as he comes in or the back of his head as he goes out what he is thinking about or is he thinking about who makes the Camel cigarettes, can you?

A. I cannot.

R-X Q. 108. You are not a mind reader?

A. No.

R-X Q. 109. Unless he says something you don't know what he is thinking in regard to that, do you?

A. I can't say what he has got in his mind, if he asks me any questions I answer him.

1782

Re-cross examination closed.

*Re-direct Examination.*

By Mr. Preston:

R-D Q. 110. Was it only when the Beech-Nut cigarettes was a new product that you had any inquiries as to who was the maker of those cigarettes?

A. Yes.

R-D Q. 111. When they were a new product did anybody ever ask you if Beech-Nut cigarettes were made by the same company makes the Beech-Nut gum? 1783

A. No.

Deposition closed.

Signature waived.

ALBERT MARKS, a witness called on behalf of P. Lorillard Company, defendant, being first duly sworn, in response to interrogatories propounded to him by Mr. Cavanagh, deposes and says, as follows: 1784

Q. 1. Please state your name, age, residence and occupation.

A. Albert Marks, 43, Green Bay, Wisconsin, salesman.

Q. 2. For what concern?

A. P. Lorillard Company.

Q. 3. What line of business is P. Lorillard Company in?

A. Tobacco and cigarette business.

Q. 4. How long have you been with the P. Lorillard Company? 1785

A. Nine years.

Q. 5. Will you name some of the tobacco and cigarette brands manufactured and marketed by P. Lorillard Company?

A. Well, the scrap tobaccos would be the Panhandle, Old Nut, Tomahawk, Honest Scrap, Polar Bear, Open Book, Havana and Beech-Nut tobacco. We don't call that scrap, it is Beech-Nut tobacco. Now, the other tobaccos would be Beech-Nut Chewing tobacco, plug tobacco, Red Cross, Climax, and the smoking tobaccos would be Yacht Club, Stag, Union Leader and Sensa-

1786 tion, and our cigarettes would be Murads, Helmars, Egyptian Dieties, Moguls, Nebos, London Life, Tigers, and Beech-Nut cigarettes. Little cigars would be Between the Acts, Royal Bengals, St. Legers, Sub Rosa, and Old Virginia Cheroots.

Q. 6. I wish you would start at the beginning and come down to date, tell us in your own words just where, since you have been located with the Lorillard Company, you have been stationed, that is, what places or territories and what your work in those territories has been, just your own history.

1787 A. Well, when I started with P. Lorillard Company, at that time we had different departments. In fact, we did up until 1922. There was a scrap department, a little cigar department, cigarette department and plug and smoking departments, but I was always associated with what we call the scrap department in Chicago headquarters. And in 1919 we started opening up Wisconsin. In fact, we had worked Wisconsin at different points previous to that time, such as Beloit, Janesville, Kenosha and Racine on scrap tobaccos. And in 1919 we came up into the southern part of Wisconsin and into Milwaukee and the company established my headquarters at Milwaukee in the fall of the  
1788 year 1919. Then we opened up Milwaukee with our entire line of scrap tobaccos. And the following year we went up the Fox River Valley and what part of the state we would have time to make before the winter set in. And during the end of the year 1921 they launched the Beech-Nut cigarette and we were called in, that is, I was. All of the head men I understand were there of the different sections of the country, other states as well, called into Chicago in preparation for this drive on Beech-Nut cigarettes.

Q. 7. As I understand it you were located in Chicago from the time you first went with the company up until 1919, is that correct?

A. That is correct.

Q. 8. And what were you selling or doing in Chicago, what was your position and duties?

A. Selling the scrap tobacco, Polar Bear and Honest Scrap when I first started selling. Then at different times we were put on special work to help some other department out in smoking tobacco and little cigars. Assigned to that perhaps maybe a month or two in a year, something of that sort, but we were always considered the scrap department.

Q. 9. So you were in Chicago on scrap tobaccos up until 1919, is that right?

A. That is it.

Q. 10. Then you were assigned to the Milwaukee territory in 1919, is that correct?

A. Yes.

Q. 11. What duties were you assigned here for? What was your work when you came here?

A. Up to that time, you mean?

Q. 12. [No, here in 1919.

A. On scrap tobaccos, Polar Bear, Honest Scrap and Beech-Nut tobacco.

Q. 13. What was your position?

A. Well, I was retail man up until November, 1919, and in November I was appointed head salesman.

Q. 14. In the scrap tobacco department?

A. In the scrap tobacco department at Milwaukee, my headquarters.

Q. 15. You had nothing to do with cigarettes in 1919, did you, in Milwaukee?

A. No.

Q. 16. What did your territory cover when you were here in 1919 on scrap tobacco?

A. Well, the entire state of Wisconsin and the upper peninsular of Michigan.

1789

1790

1791

1792 Q. 17. You have spoken of handling Beech-Nut scrap in this territory at that time. Just tell us what you did in that connection?

A. Well, I just don't understand what you mean by that.

Q. 18. Did you sell it any place?

A. Oh, yes.

Q. 19. And how long did you continue to work exclusively on the scrap tobacco department after you came here in 1919?

A. Up until the first part of 1922.

1793 Q. 20. And during all of that time you worked exclusively on scrap from 1919 to 1922?

A. No, I worked on cigarettes on September 26th, 1921.

Q. 21. Tell us just what occurred in that connection, how you came to work on cigarettes.

1794 A. Up to that time, up to September we were called into Chicago in regard to putting in this Beech-Nut cigarette, and there were men called in from all over this part of the country, head men, and our boss Mr. Fitzsimmons of the scrap tobacco was in Chicago and there was something said about asking him if he wanted his men in a meeting they were going to have and he said it was not necessary, that his boys knew all about special work on anything special, they were specialty men and it was not necessary and he dismissed us, for us to come back later in the day and all of the Fitzsimmons men, the scrap department men, were dismissed. The latter part of the day we went back and Mr. Fitzsimmons said there was not anything necessary he could say to us in regards to the work, that we knew exactly what to do and to place the Beech-Nut cigarettes just the same as we had always previously worked our scrap department.

Q. 22. So when was this meeting at Chicago, approximately when?

A. Well, let us see, it was about the 23rd or 24th 1795  
of September.

Q. 23. What year?

A. That was 1921.

Q. 24. You had some meeting at Chicago, didn't you?

A. Yes, sir.

Q. 25. Where did you go from Chicago at that time  
after you left there?

A. To Milwaukee.

Q. 26. You came back to Milwaukee?

A. Yes, we were assigned to territory to work, so  
many counties. We took the Fox River Valley, that is  
Sheboygan, Fond du Lac, Oshkosh, Neenah, Menasha, 1796  
Appleton, Green Bay and Manitowoc. My boys were  
here in Milwaukee so we moved up to Sheboygan.

Q. 27. As I understand it, to pursue this matter  
logically and in order, you were assigned a territory.  
When and where and by whom were you assigned that  
territory?

A. By Mr. Fitzsimmons.

Q. 28. At Chicago?

A. At Chicago.

Q. 29. And you came back to Milwaukee?

A. I came back to Milwaukee to instruct my men to  
get their cars, we had two cars, to open up these towns 1797  
they assigned us and we drove through on the two cars  
and took the interurban here up to Sheboygan.

Q. 30. Has that territory which you were assigned  
any term or name, such as the Northern District of Wis-  
consin or Western?

A. They call it the Fox River Valley territory.

Q. 31. And that is the territory to which you were  
assigned in September 1921?

A. That is right.

Q. 32. Then you went, as I understand it from Mil-  
waukee up to the Fox River Valley, to your territory?

A. Yes, sir.



1798 Q. 33. And you took your crew with you from Milwaukee?

A. Yes, sir.

Q. 34. Where did you make your headquarters for that Fox River Valley territory?

A. Our headquarters were at Milwaukee at all times.

Q. 35. Did you have any sub-headquarters?

A. The only headquarters we had was the hotel we were stopping at while in town. Our headquarters were always in Milwaukee.

Q. 36. But you worked at different towns and stayed in the Fox River Valley on this Beech-Nut cigarette campaign?

1799

A. Oh, yes.

Q. 37. How many men did you have in a crew?

A. I had four men.

Q. 38. And about when did you start that campaign?

A. About the 26th of September.

Q. 39. What year?

A. 1921.

Q. 40. Can you give me the names of those men you had?

A. Yes, there was Roy Hansen, Urban Zimlicka and a fellow named Lloyd Whitney.

1800 Q. 41. Are all of these men with you now or with the company?

A. No, sir.

Q. 42. Do you know where they are, or where they are located?

A. I don't know anything about them.

Q. 43. Tell me, as near as you know?

A. Morris Miles lives at Lansing, Iowa, and Zimlicka lives at Linden, Wisconsin, and Whitney lives at Marshfield and Hansen lives at Oshkosh.

Q. 44. Were these men or any of them with you prior

to the beginning of the Beech-Nut cigarette campaign, September 26th, 1921? 1801

A. Oh, yes, they were, I would say right off, not exactly knowing the length of time, but they were anyway with nie some of them as high as nine months, some of them six months.

Q. 45. Had they sold Beech-Nut scrap through this Wisconsin territory under your directions?

A. Oh, yes, sure.

Q. 46. Now, tell us just how you proceeded to conduct this introductory campaign on Beech-Nut cigarettes in that Fox River Valley territory which was under your charge?

A. Well, we worked the cigarettes just the same as we worked the scrap department, you understand, on the strength of our past success on all of those different brands, that is, our success on our scrap tobacco. 1802

Q. 47. How did you proceed when you were introducing the Beech-Nut cigarette?

A. We would go into a town and I assigned the men different territories of the town, and myself, I would alternate, working with one man and then with another man perhaps half a day or a day, going along with the men to see that their work was done properly. That was my work, to see that a town is properly advertised and to see that we have the proper distribution. 1803

Q. 48. What time did you start out in the morning?

A. Well, we left a call seven o'clock when there was just calling on trade, but if there was any missionary work to be done, any sampling, we left an earlier call, and if there were factories in the town and the consumer was going to work as early as five and six o'clock in the morning. All depends on what factories there were in the town. We not only sold goods but advertised and sampled.

1804 Q. 49. I understand you to say you would go with one of your men in this crew?

A. Positively.

Q. 50. Now, if you went into a store to introduce the Beech-Nut cigarette, what would you do, or what did you do?

A. Went into this store and introduced ourselves—my name.

Q. 51. How?

A. "Is the buyer in?" "Alright, my name is Mr. Marks", and if I had a deal with another man, "This is Mr. Zimlicka, we are representing P. Lorillard Company, the makers of the celebrated Beech-Nut Tobacco which I see you have on hand", or have had or haven't had, whatever the occasion might be. And, "We are introducing this brand" or whatever it may be, "on the strength of our other brands, Lorillard Tobacco Company being in business ever since 1760, one of the oldest concerns in the United States", we would present our article, whatever we had, for sale. That is about the only thing we would do, any more than talk on the merits of the goods, and insist and stay until we got an order.

1805

Q. 52. What, if anything, did you carry with you when you went in there?

A. We always carried the article, carried it for cash, that was the instructions always to carry the goods we had along for cash, that is, anything special we were pushing. Those goods were supposed to be sold to the dealer, put on a shelf, given a receipt for the same, and telling him that should he require any more of this particular kind of goods he can get it from his wholesale house, the jobbers, that all jobbers in the country handle our line of stuff.

1806

Q. 53. On this Beech-Nut cigarette campaign when you went into a man's store what did you carry with you in connection with the Beech-Nut cigarette?

A. We carried Beech-Nut cigarettes only, that is any commodity to sell, but we had advertising, we had two or three different sorts of posters and then we had metal signs and we had packages, they were regular packages same as the stock, what we called samples, but they were not samples, they were regular fifteen cent packages of Beech-Nut cigarettes. 1807

Q. 54. You had a carton of cigarettes, did you?

A. Oh, yes.

Q. 55. And you sold cartons to the man if he wanted to buy them?

A. Yes.

Q. 56. What I understand you to say, you gave him a receipt? 1808

A. We collected cash, that is the custom.

Q. 57. You collected cash and collected a receipt?

A. Yes. Distribution was what we were working on and we insisted on selling a man the first carton to get it on his shelf, we got a receipt always. The reason why I always insisted on giving a receipt was that my name—in fact, all division managers' names—is stamped on the bottom of each and every order, whether original or duplicate. This dealer was left this receipted bill with my name on there, in case of any misrepresentation on the part of any of the men or anything of the sort they would have my address and enter their complaint, and the P. Lorillard Company's name was on top of it and if they did not refer to me they could refer it to the New York office in any misrepresentation, or give us an opportunity to check up on the sales. 1809

(The witness produces an order slip consisting of three sheets, one a yellow sheet, one a white sheet and one a tissue paper sheet, with his name stamped on the white sheet and the yellow sheet, and it is agreed between counsel that as these order blanks

- 1810 are similar to the order blank Defendant's Exhibit No. 10 already introduced in the case, and that reference will hereafter be made to Defendant's Exhibit No. 10.

The witness: (Continuing) Now, in case this customer did not care to buy from us, they have their jobbers and deal with their jobbers. Then he signs this order and he gets the duplicate, whether he pays cash or gives the order through the jobber, the original is brought in to me each and every night and turned over to me and I take them to the jobber they are made out for the goods to be delivered.

- 1811 Q. 58. The carton of Beech-Nut cigarettes which you have brought into the store and would sell to the customers if he wanted to purchase, was it like this carton of ten packages of cigarettes which is here before you and which is also in this case as Defendant's Cross Exhibit No. 9.

A. Positively the same; fac-simile.

Q. 59. And likewise the individual packages of cigarettes, are they like this plaintiff's Exhibit No. 1?

- 1812 A. Positively the same thing. Our samples were all original stock. They were the original package, there wasn't any such thing as samples when we first started Beech-Nut cigarettes. The cartons we used as samples were the same as the stock, in fact they were the stock because I would get these packages and charge myself up to the amount of packages I got and credit the jobber I got them for.

Q. 60. Now, you stated that you took some advertising matter into the store when you called on a customer. What did you do with the advertising matter in that store?

A. We asked the storekeeper if we could place it on his window post and if they objected to it we asked him

if we could put it up on the wall on the inside, and not only that, but we asked him to kindly allow us to take this carton of Beech-Nut cigarettes like Defendant's Cross Exhibit No. 9 here, and place it open on the counter, and in each and every carton of this cigarette there is a little yellow carton card bearing the words "Lorillard's Beech-Nut Perfect Cigarettes, 20 for 15 cents, greatest of them all." Inserting this in the end of the carton and placing it on the end of his show case. 1813

Q. 61. I understood you to testify this manner of introducing Beech-Nut cigarettes to the trade during this campaign, was similar to the procedure you followed in introducing Beech-Nut scrap tobacco to the trade, is that correct? 1814

A. Yes, sir.

Q. 62. You had taken part in a campaign introducing the Beech-Nut scrap tobacco in this Wisconsin territory, is that correct?

A. That is correct.

By Mr. Johnson: Objection to the leading questions.

Q. 63. (By Mr. Cavanagh) And have you had the same men with you in that introductory campaign on the Beech-Nut scrap you had with the Beech-Nut cigarette? 1815

A. Yes, sir.

Q. 64. So that they were familiar with the manner of introducing the Beech-Nut scrap?

A. Yes, sir.

Q. 65. What instructions did you give them in introducing the Beech-Nut scrap in connection with the campaign of the Beech-Nut scrap tobacco, if any?

A. Well, sir, instructed them that on the strength of our past success with Beech-Nut tobacco, and Lor-

- 1816 illard being in business since 1760, one of the oldest and largest concerns in the United States and at all times, I had instructed them in promoting the sales of scrap tobacco to always be careful in mentioning any other competitive brands. Now, my object in that was this, that my early training had been never mention any competitive brands as in so doing my superiors had always said we were advertising the other fellows tobacco and that has always been my strong point, to be loyal to P. Lorillard Company and not mention any other concerns. Loyalty, that was one thing we stuck by and always did insist upon, and that would apply to the cigarette just the same as it would to the Beech-Nut tobacco.
- 1817

Q. 66. You say it did apply to the cigarette as well?

- A. It did apply, and furthermore, that the section we were going to work is a very big Turkish section and P. Lorillard cigarettes were the leading Turkish cigarette in that section and it would be very well for them, and in fact I insisted on them mentioning the different Turkish brands of the P. Lorillard Company for the amount of prestige that we might get in placing the Beech-Nut cigarette, and I have always impressed upon them that the word "P. Lorillard" on tobacco was just the same as "Sterling" on silver, that they should be well proud of working for an old concern like that and such a large concern. And in not only selling goods, but also sampling the consumers our sale talk came in practically the same to the consumer. We were forever talking P. Lorillard Company, one of the oldest concerns of that kind in the tobacco business, and on the strength of them being the makers of the highest grade Turkish cigarettes in existence.
- 1818

Q. 67. I understood you to testify you would go into a store with one of your salesmen in various towns during this campaign, is that right?

A. That is right.

Q. 68. Did you work the towns of Green Bay, Manitowoc, and Appleton during this Beech-Nut cigarette campaign? 1819

A. Yes, sir.

Q. 69. You personally called on the trade in those towns?

A. With one of the men or the other, alternating.

Q. 70. Of your crew?

A. Of the crew.

Q. 71. Will you state whether or not you ever told anyone, or left anyone under the impression that the Beech-Nut cigarettes or the Beech-Nut scrap were made by the same concern that makes the Beech-Nut gum and the Beech-Nut food products, made by the Beech-Nut Packing Company? 1820

A. Did I ever insinuate anything like that?

Q. 72. Yes.

A. Absolutely not.

Q. 73. Did you ever know any of your men to make any such statement to your knowledge?

A. Absolutely not.

Q. 74. Will you state whether or not if such a statement had been made by any of your men it would be contrary to your orders?

A. Absolutely, they know that.

1821

Q. 75. Will you please state whether or not you heard from any customer or consumer or purchaser any comments or inquiries or questions which would lead you to believe that they thought the Beech-Nut cigarettes and Beech-Nut scrap tobacco were made by the Beech-Nut Packing Company or the concern that makes the gum or food products?

A. No, sir, the brand was too well established up there to do anything of that kind. Lorillard was too well established.



1822 Q. 76. About how many dealers or customers a day would you call on during this campaign?

A. Well, that would average from twelve to fifteen dealers, I would think, and it would be sometimes perhaps more and then again not so many. It all depends on whether it was in a scattered section or congested section.

Q. 77. And how long did you continue this Beech-Nut cigarette campaign?

A. Up until the third week in December of 1921, then we went on our vacation.

1823 Q. 78. Did you ever have any meetings with your crew for instructions before they started out or at any time?

A. Do you mean on this Beech-Nut cigarette?

Q. 79. Yes.

A. Sure, I did.

Q. 80. How often did you have those meetings?

A. Well, I tell you, we didn't have any meetings because I was with the men all the time, we were with the men every night of the week.

Q. 81. Where were you with them?

A. At the hotel, I was right with the men at all times.

1824 Q. 82. Were the whole crew at the hotel?

A. Yes, the men that were in the town. Some men would be out a day or two, assigned to some town that they couldn't get back, but they were supposed to report.

Q. 83. You had them together frequently?

A. Oh, yes, you might say at all times I was in direct contact with the men, every night.

Q. 84. What instructions did you give them when you were together in connection with this Beech-Nut cigarette?

A. The only instructions I gave them was when we

first started, as I have stated here, with regards to placing this Beech-Nut cigarette with the storekeepers on the same plan and ideas we did the Beech-Nut tobacco, on the strength of being one of P. Lorillard's brands. 1825

Q. 85. And that crew had already worked with you on this Beech-Nut scrap tobacco, as you testified?

A. Absolutely, there wasn't anything to instruct each and every night any more than finding fault perhaps because they hadn't put up enough posters on the man's windows or something of that sort.

Direct examination closed.

1826

*Cross Examination.*

By Mr. Johnson:

X-Q. 85. Mr. Marks, when did you enter the employ of the P. Lorillard Company?

A. Well, sir, that was in November, 1914.

X-Q. 86. Are you in their employ now?

A. Yes, sir.

X-Q. 87. Have you been with them ever since?

A. Ever since.

X-Q. 88. What line of work were you in before you joined them? 1827

A. Well, sir, I was selling goods, I was selling bottles and corks and labels.

X-Q. 89. Were you in the tobacco business at all before that?

A. No.

X-Q. 90. Where are you stationed now?

A. Green Bay, Wis.

X-Q. 91. In what position?

A. As head salesman.

1828 X-Q. 92. Of any department?

A. No. You see, we haven't got those separate departments any more since 1922.

X-Q. 93. You are head salesman for all of the Lorillard products?

A. The entire line of products.

X-Q. 94. And what is that district?

A. It is what we term the northern part of Wisconsin and the upper peninsula, that would be from Fond du Lac, Wisconsin.

X-Q. 95. And from Fond du Lac north?

A. Yes, not south, don't come south of Fond du Lac.

1829 X-Q. 96. How do you speak of the district south of your district?

A. We call that the Milwaukee section or southern section, in other words, I guess.

X-Q. 97. I understood you to say that during the Beech-Nut cigarette campaign your crew consisted of four men beside yourself, is that right?

A. That is right.

X-Q. 98. And were these all men who had previously been in the P. Lorillard Company's employ before they entered this campaign?

1830 A. Yes, sir.

X-Q. 99. How long had the newest man been with the P. Lorillard Company, do you know?

A. How long had the newest man?

X-Q. 100. Yes.

A. I would have to look up my records, I would be safe in saying six months anyway.

X-Q. 101. Which one was he?

A. Well, that was a fellow named Hanson.

X-Q. 102. How long was the oldest P. Lorillard Company man in the employ before that?

A. He had been with me since 1920, first of January, 1831 1920.

X-Q. 103. Which one was that?

A. Morris Miles.

X-Q. 104. Did you have these same four men with you right through the campaign?

A. On cigarettes?

X-Q. 105. Yes.

A. Yes.

X-Q. 106. I am speaking of the Beech-Nut cigarette campaign beginning, as you have stated, September 26th, 1921?

A. Yes, September 26th, 1921.

1832

X-Q. 107. And how long did that campaign continue?

A. That continued up until the end of the year, that is, the third week in December. We went on our vacations the same week.

X-Q. 108. Was the introductory campaign resumed after the vacation?

A. No, we worked our regular line.

X-Q. 109. Did you have any other men at all helping you in this special Beech-Nut cigarette campaign beside these four?

A. No, that was all.

X-Q. 110. None others hired temporarily?

1833

A. No, just my own men, that is all.

X-Q. 111. You didn't organize any special missionary crews?

A. No.

X-Q. 112. Are any of these four men who were with you then still with the P. Lorillard Company?

A. No, I don't think so, in fact, I know they are not.

X-Q. 113. Do you know when Mr. Hanson left the employ of the P. Lorillard Company?

A. No, I can't just recall that.

X-Q. 114. Just approximately?

1834 A. Oh, I should judge about a month previous to us going on our vacation that year, the third week in December, 1921.

X-Q. 115. Didn't you just say all of these four men worked with you on through this campaign to the end of it?

A. Yes, all except this Mr. Hanson.

X-Q. 116. Then Hanson left during the campaign, did he?

A. Yes, he left during the campaign.

X-Q. 117. Why did he leave?

A. Well, I considered him kind of weak, and I didn't want to carry him over to the next year, and it is customary, understand to always get rid of any inferior material we have in salesmen always before the vacation not extend them that courtesy and he was not a strong enough salesman for us to carry over.

X-Q. 118. Did you watch his work during this campaign?

A. Yes.

X-Q. 119. Were you with him a good deal?

A. Yes I was with him, I was trying to develop him and he was slow to develop. Some men develop very fast and others do not.

1836 X-Q. 120. Did you find that he was a little bit careless in presenting these Beech-Nut cigarettes to the dealers.

A. No, it was not that at all, he followed instructions to the letter, understand, there wasn't any fault in that. The only thing was he couldn't talk. I tried to develop him to approach the customer better but he was a very honest fellow and followed instructions to the letter as far as I ever knew anything about him, but he was not there when it came to putting up the argument. He didn't develop to talk the line of stuff, that was it. Had no conviction.

X-Q. 121. Did you and your crew do the town of Manitowoc and district during that campaign? 1837

A. I assigned men to each section, you understand.

X-Q. 122. Were you and your crew in Manitowoc for a while during that campaign?

A. Yes.

X-Q. 123. Was Mr Hanson with you then?

A. Yes.

X-Q. 124. Did he do a part of the town of Manitowoc for you?

A. Oh, yes.

X-Q. 125. Now, this Mr. Urban Zimlicka, did he stay with you right through the campaign? 1838

A. Yes.

X-Q. 126. When did he leave the employ of the P. Lorillard Company?

A. He left sometime during the following year, in 1922.

X-Q. 127. Do you know why he left the company?

A. Why, yes, I assigned some work to do and he thought it was a little bit—it didn't just appeal to him so I let him go. In other words I sent him out to put up some enamel signs and they were very heavy and some boys don't care to do some of that heavy work, so I found out he was complaining about it and rather than have any friction at all with any of the crew it is policy to get rid of a man like that. 1839

X-Q. 128. What time in 1922 did you say he left?

A. Well I couldn't say as to that. I would have to look up my records.

X-Q. 129. When did Mr. Lloyd Whitney leave the employ of the P. Lorillard Company?

A. Lloyd Whitney left the employ—he resigned at Manitowoc, this same town.

X-Q. 130. When was that?

A. That was in 1921.

1840 X-Q. 131. What month?

A. Well that was in December too, right up until the last of the campaign.

X-Q. 132. Did he leave you before the campaign ended?

A. Well, right about the time of the end of the campaign.

X-Q. 133. He didn't stay with you then right through to the end?

A. Within a week, I guess.

X-Q. 134. Why did he leave the company?

1841 A. Well, if I remember right, now, I don't know, he just wanted to leave, that is all. He resigned and I think his statement was at the time that he didn't like the idea of selling cigarettes, that his folks were objecting.

X-Q. 135. How long had he been with the P. Lorillard Company?

A. Well, he had been with me about seven months.

X-Q. 136. Had you been watching his work during this Beech-Nut cigarette campaign?

A. Yes.

X-Q. 137. Had you been with him on his visits to the dealers?

1842 A. Not a great deal. I couldn't be with anybody a great deal, understand, alternate, I was with one of the men each day.

X-Q. 138. But you were with him—

A. —as much as I was with any of the other men, with the exceptions of perhaps if I had assigned him—he had a car and instead of working the larger towns he would make the smaller towns, perhaps one store or two or three stores, little country towns.

X-Q. 139. This time he resigned in Manitowoc, is that the time you and your crew were doing the Manitowoc neighborhood?

A. Yes, we had finished. It was our second trip back into Manitowoc, brushing it up. We had finished the territory and were coming back brushing it up again with advertising posters. 1843

X-Q. 140. Had you found he was careless in his manner of presenting these Beech-Nut cigarettes to the dealers?

A. Absolutely not, had no fault to find with Mr. Whitney, he followed instructions to the letter and he was very honest.

X-Q. 141. Did he visit the dealers in parts of Manitowoc?

A. No, he didn't visit any dealers in Manitowoc. 1844

X-Q. 142. Are you sure of that?

A. Yes, I am sure of it.

X-Q. 143. Why was that?

A. Not any particular reason except he was assigned outside of town, it just happened to be his lot he was assigned on some outside stuff on account of operating a car. We didn't usually operate the car in the town when the crew was there, understand. We had two cars.

X-Q. 144. Did you keep records of the assignments of your men during your campaign trips?

A. Assignments? I don't just understand what you mean by "assignments." 1845

X-Q. 145. The assignment of districts from day to day, did you keep any records of where you assigned each man each day?

A. Yes, sure, I have those records.

X-Q. 146. You could check up on them, could you, if you were asked to?

A. Well, now, I don't know whether I could or not either. That is the time I was down here in Milwaukee, my headquarters, and it is possible those records at that time have been destroyed when we moved. We burned a



1846 lot of stuff when I moved here rather than carry it along, when I moved up to Green Bay to make my headquarters there.

X-Q. 147. Then during a part of this campaign drive you were not right with your crew, were you?

A. I was in direct communication with them, I was right with them and assigned them and they were perhaps out one day and back that same night.

X-Q. 148. But during this time at Manitowoc, this second time that your crew was in Manitowoc you have spoken of, you have said you were not with them. About how long was that that you were not with them?

1847 A. Did I say I wasn't with them in Manitowoc? I couldn't carry these records around with me. Understand, each and every week when I would come home I would have all of this accumulation to put on file here at home.

X-Q. 149. At Milwaukee?

A. Yes, at Milwaukee headquarters.

X-Q. 150. I want to understand about the second time your crew was in Manitowoc?

A. I was there with my men.

X-Q. 151. You were there with your men during the time they were working Manitowoc the second time?

1848 A. Yes, sir. That is the time Mr. Whitney resigned, understand. He came in and I got him on the phone sometime, I don't remember what phone it was, they were supposed to send in their reports, they got my routes, they are supposed to send in their daily reports for me to send in to the New York office, and I got him on the phone and called him in and when he came in that night he came in pretty late and tired and I suppose he was kind of peeved and one thing and another that is the time he resigned.

X-Q. 152. This Morris Miles, did he stay with you right through the campaign?

A. Oh, yes.

1849

X-Q. 153. When did he leave the employ of the P. Lorillard Company?

A. He left in the fall of 1922, because he was with me after I made my headquarters in Green Bay.

X-Q. 154. Why did he leave the company?

A. Well, Mr. Miles had applied for a position with some other concern and I got wind of it and thought if he was applying for some other position it would only be a question of time I would lose him, so to protect myself I discharged him.

X-Q. 155. Where did he go from the Lorillard Company?

1850

A. That I couldn't say, I can't recall.

X-Q. 156. Can you tell me again the present address, so far as you know, of Mr. Hanson?

A. As far as I know it is Oshkosh, Wisconsin.

X-Q. 157. And of Mr. Whitney?

A. At Marshfield, Wisconsin.

X-Q. 158. During this special Beech-Nut cigarette drive did you observe anything in the way your men were working the territory, or did you hear anything from the dealers that caused you to caution them about the way they presented these Beech-Nut cigarettes?

A. I had no occasion to.

1851

X-Q. 159. You had no complaints of any kind about the way you were offering the Beech-Nut cigarettes to the market?

A. No, none whatever.

X-Q. 160. Then during this campaign their methods were your methods, were they?

A. Absolutely.

X-Q. 161. Didn't you have any other men at all than these four during that campaign?

A. No, that was all.

1852 X-Q. 162. Did you take part in the introductory campaign of the Beech-Nut scrap tobacco?

A. Oh, yes.

X-Q. 163. What district was that?

A. In Illinois.

X-Q. 164. Did you take part in the introductory campaign of Beech-Nut tobacco in Wisconsin?

A. Oh, yes.

X-Q. 165. What part of Wisconsin?

A. Southern part of Wisconsin, that is Kenosha, Racine and Beloit, Madison and the western part over there around Grant County and Milwaukee.

1853 X-Q. 166. Didn't you say on direct examination that you were assigned to the Fox River Valley in that campaign?

A. Yes, I did, but I am talking about the whole year, but I had the whole state and the upper peninsula.

X-Q. 167. On that Beech-Nut scrap?

A. Yes, but it was not until 1921 that I had charge of the state, you understand. I was in 1919 in the southern part of the state.

1854 X-Q. 168. While you were in charge of the drive on Beech-Nut scrap tobacco in Wisconsin, did you call any meetings of your salesmen in order to warn them to be careful not to present this Beech-Nut tobacco or let it appear it was the product of any other concern but the Lorillard Company?

A. Well, yes, that has always been my instructions, but we had no special meetings, you understand, because I was with the men at all times in their crew work in this tobacco, same as the cigarettes, and my early training had always been to the point to never mention any competitor's name because we had reaped a whole lot of benefit, you understand, from these other tobacco concerns mentioning our commodity, they were advertising us and it has always been my early training to

never mention it, only P. Lorillard Company, never mention any other concern, regardless of who, because it would be advertising their brands. 1855

X-Q. 169. Can you name any particular time or instance when you talked to your men along that line?

A. Why, it is all of the time.

X-Q. 170. Can't you think of one particular instance, place an approximate time?

A. No, because that was every day's conversation, "Loyalty" never left it a minute. Never had any occasion to call any special meeting in that respect because my men were kept right up with those instructions at all times, never let them forget about it. 1856

X-Q. 171. Either before or during the Beech-Nut cigarette introductory campaign did you call any meetings of your salesmen?

A. I did on the cigarettes. Indeed I did, to outline the work in regards to the same outline we did on the scrap tobacco.

X-Q. 172. Did you particularly warn them to avoid doing anything in offering these cigarettes to dealers, to avoid appearing to present them as the product of any other company than your own?

A. No, not any more than to mention P. Lorillard Company's Beech-Nut cigarettes. 1857

X-Q. 173. Did you ever write your salesmen any letters warning them against that sort of thing?

A. No, I don't recall any.

X-Q. 174. Either during the Beech-Nut tobacco campaign or the Beech-Nut cigarette campaign?

A. No, sir.

X-Q. 175. You never wrote anything?

A. I never had any occasion to write my men because I am always with them, and the same today.

X-Q. 176. Is this Wisconsin district for the purpose of P. Lorillard Company sales and distribution, a part of any larger district?

1858 A. Well, now, I just don't get that.

X-Q. 177. Is this Wisconsin district a part of any larger district for P. Lorillard Company's sales and distribution? A part of some district, for instance, with headquarters at Chicago?

A. No. We have a sales manager in Chicago that has charge of this whole section. We are what you might term a local representative, sort of a head salesman.

X-Q. 178. Did you ever receive from this sales manager in Chicago, to whom I understand you report, any letters or circular letters instructing you and your salesmen to be careful in presenting either the Beech-Nut tobacco during the time of this campaign or the Beech-Nut cigarettes during their campaign, to be careful not to let them appear as being put forward as the product of another company than your own?

A. No, sir, never.

X-Q. 179. Never received any letters or circulars?

A. Never.

X-Q. 180. Did you receive any letters or circular letters of that character from the P. Lorillard Company home office?

A. Well, now, I got a great many instructions, circular letters of that sort, but I don't recall of ever receiving anything pertaining to that question you ask me.

X-Q. 181. You don't remember receiving any letter or written instructions from the P. Lorillard Company in regard to your manner of presenting the Beech-Nut tobacco or Beech-Nut cigarettes, cautioning you to avoid letting them appear to be the product of any other company than your own?

A. Well, I don't recall ever receiving them.

X-Q. 182. In your district did you have any competition among your salesmen, special rewards for those

who sell the most during a given length of time or any- 1861  
thing similar to that?

A. No, sir.

X-Q. 183. Did you or the company offer any bonuses or special money inducements to your salesman or the jobbers' salesmen to increase the sales during those campaigns?

A. Well, I don't know whether anything special. I think that went on our yearly bonus. You know, we work on a yearly bonus, but nothing special. That would come under the year's work out of the scrap department. We work under a sort of bonus proposition.

X-Q. 184. But I mean during these campaigns and having reference to your sales of the Beech-Nut tobacco or Beech-Nut cigarettes, were there any money inducements offered as additional compensation or commission for the salesmen for sales made during this campaign? 1862

A. If I understand you right, you mean during this campaign for cigarettes, any special inducement?

X-Q. 185. Either one.

A. Only as a yearly bonus, a yearly bonus on increased business in that department, the scrap department.

X-Q. 186. Did you see any circular letters or circulars in your district offering some additional sum like ten cents or twenty-five cents a thousand to salesman or jobbers' salesmen on the sale of Beech-Nut cigarettes during a given period? 1863

A. No. We never had anything like that.

X-Q. 187. During your experience in selling or conducting the sales of Beech-Nut scrap tobacco did you hear any questions at all or any comments about whether this Beech-Nut scrap tobacco is made by the same people that put out the Beech-Nut gum and Beech-Nut peanut butter and those other Beech-Nut products?

1864 A. Well, I will tell you, I don't just recall of any special place or anything of that kind, but I will be safe in saying I have had perhaps a mighty few ask me that question, but I cannot recall of having very many ask me that.

X-Q. 188. You didn't try to remember such incidents, I suppose, at the time?

A. No, because we really were not interested in anything about anybody else. The only thing, if I was asked that question, as near as I can remember, that I would immediately deny it, of course, and say that this was the P. Lorillard Company, that has always been on by line, understand, you know.

1865 X-Q. 189. In regard to Beech-Nut cigarettes, did you ever hear any such questions or comments at all?

A. No, I haven't, because the section we worked on, Beech-Nut tobacco, understand, the P. Lorillard Company was so well represented, I can't see why anybody would ask that question. In fact, they never asked me or my men have never mentioned about anyone asking them about it.

X-Q. 190. Did you make any attempt to remember such comments and inquiries at the time?

1866 A. Well, I don't remember of ever hearing and I don't remember of remembering it.

X-Q. 191. Were you ever asked to make any note of such questions and comments you heard?

A. No, sir.

(Cross Examination Closed.)

*Re-direct Examination*

By Mr. Cavanagh:

R-D Q. 192. How does the Beech-Nut scrap tobacco sell in your territory, what kind of seller is it?

A. Well, it is the leading seller.

1867

R-D Q. 193. In what lines?

A. In what they term scrap tobacco.

R-D Q. 194. In your cross examination you used the expression, "This was the P. Lorillard Company, that has always been our by-line, you know." What did you mean by that expression?

A. I mean that has always been my early training instructions to use the word "Lorillard's" so there would be no misrepresentation, and we use the word "Lorillard" so they wouldn't associate Beech-Nut cigarettes or tobacco with anybody else but P. Lorillard Company. That is what I meant by that.

1868

R-D Q. 195. In other words, Lorillard is the big thing, is that it?

A. That is what I meant.

R-D Q. 196. Near the close of your cross examination you stated that Lorillard Company was so well represented in this territory. What did you mean by that?

A. Represented by the Beech-Nut tobacco and their Turkish cigarettes.

R-D Q. 197. You mean their representation was so well established, is that it?

A. Yes.

1869

R-D Q. 198. Now, these four men you have stated that you had in your crew, this Hanson, Miles Whitney and Zimlicka, are no longer with the company?

A. No.

R-D Q. 199. Will you state whether or not any of these men were discharged from the Lorillard Company on account of any failure to follow your instructions in the marketing of Beech-Nut cigarettes or Beech-Nut scrap tobacco?

A. No, sir, except this Zimlicka on account of resenting doing the particular work he was assigned to of putting up enamel signs.



1870 R-D Q. 200. Will you state whether or not you ever knew of any of your men disobeying your instructions as you recited them in your examination?

A. Never knew any of them to.

R-D Q. 201. What would have happened to them if they had disobeyed your instructions in that respect?

A. They understood we would discharge them.

R-D Q. 202. When were you introducing the Beech-Nut scrap in Illinois, which you referred to in your cross examination?

A. That started in the year 1916.

1871 R-D Q. 203. When did you first do any work at all in this Wisconsin territory for the Lorillard Company?

A. Well, it was in the latter part of 1916, 1917, 1918 and 1919.

R-D Q. 204. You were up through this section of the country?

A. In the southern part, not up here, down around Racine, Kenosha and Beloit. We didn't come up here, there were other men in here.

R-D Q. 205. You were not up in the Fox River Valley during those years?

A. No.

1872 R-D Q. 206. As early as 1916 you were not up in the Fox River Valley?

A. No, indeed.

(Re-direct Examination Closed.)

*Re-cross Examination*

By Mr. Johnson:

R-X Q. 207. When did you conduct the drive on Beech-Nut scrap tobacco in the Fox River Valley territory in Wisconsin?

A. In 1920.

R-X Q. 208. What part of 1920?

1873

A. Well in fact, the latter part of 1919 and all of 1920.

R-X Q. 209. When did that drive on Beech-Nut scrap tobacco commence in that territory?

A. 1919. Do you mean in Wisconsin?

R-X Q. 210. Yes.

A. 1919.

R-X Q. 211. What part of the year what month?

A. Well we came up in Wisconsin just about July and August, 1919.

R-X Q. 212. How have the Beech-Nut cigarettes sold from the beginning when you introduced them in Wisconsin?

1874

A. Well, it is kind of discouraging, not very good.

R-X Q. 213. When were the sales the largest?

A. When they first put them out, when the jobber was placing them.

R-X Q. 214. Has the quality of the cigarettes proved disappointing?

A. No, I have never had any complaint about the quality of the goods. The only complaint we ever had all the way through was they were too mild, they were not strong enough. It seemed as if the consumer up here is used to Peerless, a stronger tobacco, and Beech-Nut cigarette in this market is too mild for them.

1875

R-X Q. 215. How are the Beech-Nut cigarettes selling right now?

A. They are not selling.

(Re-cross Examination Closed.)

*Re-direct Examination*

By Mr. Cavanagh:

R-D Q. 216. What do you mean by "not selling", that there is not a package of them sold?

- 1876 A. They are just stagnant. There is still some of them being sold, here and there you find a store sells a package occasionally, understand, but there is nobody selling them in the terms of selling compared with any other commodity in the way of cigarettes.

R-D Q. 217. Was Beech-Nut scrap on the market when you first came to that Fox River territory in July, 1919?

A. Well, it was on sale, yes, but it was not 100%.

Deposition Closed.

Signature Waived.

1877

#### STIPULATION.

IT IS STIPULATED by and between counsel for the respective parties that if ALBERT MARKS, a witness who previously testified on behalf of P. Lorillard Company, were recalled, he would testify in connection with his previously given deposition as follows:

- 1878 That the names of Roy Hanson and Urban Zimlicka were given by me by mistake, as members of my crew working the Fox River Valley territory from September to December, 1921, in the introductory campaign on Beech-Nut cigarettes. Instead of these names I should have given the names of John Dickens of LaCrosse, Wisconsin, and a man named Oldenberg of Linden, Wisconsin. John Dickens was employed by the P. Lorillard Company from about June, 1921, (right through the Beech-Nut cigarette campaign in Wisconsin) and was with them until some time in 1922 when he left to take a position selling insurance. He was not discharged. Dickens worked in my crew right through the introductory campaign on cigarettes from September to December 16th, 1921. I heard no complaints as to his work or his methods. I understand that his address is now La

Crosse, Wisconsin. Mr. Oldenberg entered the employ 1879  
of the P. Lorillard Company about six months before  
the opening of the Beech-Nut cigarette campaign in Wis-  
consin and left its employ somewhere around February  
or March, 1922, in order to go into a bank somewhere  
in Wisconsin. I believe his address is Linden, Wiscon-  
sin. Oldenberg worked in my crew in the Fox River  
Valley territory, Wisconsin, during the introductory  
campaign on Beech-Nut cigarettes from September 26th  
to December 16th, 1921. I heard no complaints as to  
his work or his methods. The facts described in regard  
to the work and methods of my crew in this introduc-  
tory campaign on Beech-Nut cigarettes apply to Dickens 1880  
and Oldenberg as members of that crew, the same as  
previously given in regard to the names Roy Hanson  
and Urban Zimlicka. I simply got the names of Hanson  
and Zimlicka of the Beech-Nut scrap introducing crew  
mixed with Dickens and Oldenberg of the cigarette crew.  
but upon looking at a memorandum after finishing my  
examination I discovered the mistake.

FRANK HOPEWELL, a witness produced in behalf of  
of P. Lorillard Company, defendant, being first du-  
ly sworn, in response to interrogatories propounded 1881  
to him by Mr. Cavanagh, deposes and says, as follows:

Q. 1. Please state your name, age, residence and oc-  
cupation?

A. Frank Hopewell, age 30, residence Milwaukee,  
Wisconsin, 1220-37th Street, occupation salesman for  
P. Lorillard Company.

Q. 2. Where is your business place located?

A. Well, I have no business place, I have a place  
what we call an office or storeroom, 401 University  
Building, Milwaukee.

1502

1882 Q. 3. How long have you been with the P. Lorillard Company?

A. Since July 6th, 1912.

Q. 4. What is your present territory?

A. My present territory consists of—you couldn't just call it the southern half of Wisconsin as it cuts off Ozaukee County, which is the nearest county immediately north of here, runs diagonally across the state.

Q. 5. It includes Milwaukee city or county?

A. It includes Milwaukee and such towns as Madison, La Crosse, Chippewa Falls and Eau Claire, it takes in those following towns.

1883 Q. 6. Southern and western part of Wisconsin?

A. That is true, sir.

Q. 7. Now, what is the present title of your position here?

A. Division manager.

Q. 8. Do you have tobacco salesmen under you?

A. I do.

Q. 9. What products of the Lorillard Company do you sell and distribute in your territory?

1884 A. The ones that I have the supervision of the sale of are the Murad cigarette and Helmar cigarette, Egyptian Dieties, Turkish Trophies and Beech-Nut. The tobaccos would be Climax, Union Leader, Comet, Havana Blossom, Pioneer, Tiger Fine Cut The little cigars would be Between the Acts, Royal Bengals, Hoffman House, Van Bibber, Flexo Giants.

Q. 10. What scrap tobacco do you market here?

A. Beech-Nut, Honest, Polar Bear, and now Open Book.

Q. 11. About how many men do you have under you here as salesmen?

A. My allotment in salesmen is eight. I have other men under me that trim windows. My salesmen allotment is eight.

Q. 12. And you have eight to-day?

1885

A. No, sir, I am one short to-day, I have seven.

Q. 13. When did you become division manager of this Wisconsin territory, including Milwaukee?

A. Division manager in Wisconsin territory the first of 1921. I was division manager before that, but not in Wisconsin.

Q. 14. Do you know who your predecessor was here in Milwaukee?

A. Yes, sir, Mr. Everett Meyer. Possibly I better put a little explanation in there, with your consent. Mr. Everett Meyer was my predecessor here in the plug and smoking departments. Since that time these departments have all been consolidated and have all been put under my supervision.

1886

Q. 15. Who had the cigarettes?

A. William Goldstein had the cigarettes in 1921 and a Mr. Barth of Chicago had the little cigars in 1921.

Q. 16. You have mentioned the Beech-Nut cigarette as being one of the cigarettes of P. Lorillard Company. Will you state whether or not Lorillard Company conducted a campaign of introducing this cigarette in this Milwaukee territory?

A. Yes, they did.

Q. 17. When?

1887

A. Starting the latter part of September, 1921.

Q. 18. When did you start work for the Lorillard Company in this Milwaukee territory? When did you come here to go to work in Milwaukee?

A. August, 1912 is the first I came to Milwaukee to work for Lorillard.

Q. 19. Then, as I understand it, you have worked in Milwaukee from 1912 down to to-day?

A. With the exception of one year, 1920, when I was in Texas for the P. Lorillard Company.

1888 Q. 20. And you became division manager here when?

A. In 1921.

Q. 21. What time?

A. 1st of January.

Q. 22. And you have been division manager ever since?

A. I have.

Q. 23. So you knew there was a campaign on in these Beech-Nut cigarettes in 1921?

A. I did.

Q. 24. Did you take any part in that campaign at all?

1889 A. I did.

Q. 25. Tell us what you did.

A. My territory was allotted me on the Beech-Nut campaign, the western half of the state. I had supervision of the salesmen that covered that section during this campaign.

Q. 26. So you did not work Milwaukee in this campaign?

A. I did not.

Q. 27. Will you name some of the principal cities that you did work in your western territory?

1890 A. The larger points I presume you want, Madison, Janesville, Beloit, La Crosse, Chippewa Falls, Eau Claire, that would be the larger points.

Q. 28. How many men did you have under you in a crew?

A. In that crew I had six men, to the best of my knowledge.

Q. 29. And what city or point did you make your headquarters?

A. Madison, Wisconsin.

Q. 30. Has the Lorillard Company any plants down there or establishments?

A. They have warehouses in Madison, yes, sir.

Q. 31. Who are they in charge of?

1891

A. Mr. George Gary.

Q. 32. How long did you conduct this Beech-Nut campaign in this territory, the western half of the state, with Madison as your headquarters?

A. The latter part of September to the latter part of December, 1921.

Q. 33. Did you give this crew of yours, any instructions as to how they should conduct a campaign in the introduction of this Beech-Nut cigarette?

A. Yes, sir. The morning they started working on Beech-Nut cigarettes I had a little conference with all of them in the Cardinal Hotel at Madison, Wisconsin.

1892

Q. 34. What instructions did you give them?

A. I instructed them to carry so many cigarettes under their arms or on their person to sell for cash to the dealers that they called on.

Q. 35. How were these cigarettes put up or packaged?

A. They were packed two hundred in a carton with a yellow slip in each carton. The carton was to be torn open and the yellow slip inserted and put on the dealer's counter where they sold the merchandise.

Q. 36. Is the yellow slip you refer to like this one which is in this carton of Beech-Nut cigarettes, Defendant's cross Exhibit No. 9?

1893

A. That is the identical slip, sir.

Q. 37. Will you read the words on that yellow slip?

A. "Lorillard's Beech-Nut Perfect Cigarettes, twenty for fifteen cents, greatest of them all."

Q. 38. And that is the carton?

A. That is the carton and the yellow slip I was referring to.

Q. 39. How many of these cartons would a man carry out with him in the morning?

A. He would take ten cartons.



1894 Q. 40. And what other instructions did you give him?

A. When he sold that cigarette he was, if possible, to get in advertising matter, and all the advertising matter in the dealer's store and on his windows that he possibly could.

Q. 41. Will you state whether or not he also carried advertising matter with him?

A. They did, sir.

Q. 42. Of what did this advertising matter consist?

1895 A. At the time of our introductory work on Beech-Nut we were working very fast and did not want to spend so much time on elaborate window displays, we were putting up posters, we had a big white poster and a yellow poster.

Q. 43. Was anyone's name on this poster?

A. Yes, sir, there is a regular picture or reproduction of a package of Beech-Nut cigarettes on this yellow poster which said, "Lorillard's Beech-Nut Cigarettes," or the name "Lorillard."

Q. 44. How often did you have these meetings of your crew?

1896 A. These meetings, I would work these men, for instance, I would give you an example, out in Madison, I would route them out in different ways so as to meet my boys in LaCrosse ten days after they had finished Madison. The salesmen were to each take smaller towns they were to cover and as soon as I would meet them in LaCrosse I would then hold another meeting with them and that would be continued at all of the larger points.

Q. 45. Did you go around or in company with any of the salesmen when they called on stores or the trade?

A. I did, sir.

Q. 46. Will you please state whether or not you gave them any instructions as to how to approach and introduce the cigarette to the storekeeper or purchaser? What did you tell them to say, if anything?

A. I told them to tell them that was a cigarette manufactured by the P. Lorillard Company, and we also manufacture other brands of cigarettes and tobaccos as Climax, Union Leader, Murad, Beech-Nut chewing tobacco, in fact we would pick out a brand of ours that was selling the best in that particular territory or town in which we were working, letting that good selling brand be our prestige in putting in this cigarette. 1897

Q. 47. You sold Beech-Nut scrap tobacco through that territory and here in Milwaukee?

A. I have, sir.

Q. 48. What kind of seller was that and what kind of seller is it? 1898

A. Beech-Nut chewing tobacco I would say, and in fact I know, to be the best selling chewing tobacco of that description in Wisconsin to-day.

Q. 49. Did you ever know of any of these salesmen of yours in that campaign or at any other time, in the sale of Beech-Nut cigarettes, to disobey your instructions as to approaching customers?

A. No, sir, not to my knowledge.

Q. 50. Did you ever hear of any comments or inquiries or remarks from customers or consumers of the trade which would lead you to think they were under the impression the Beech-Nut scrap tobacco or Beech-Nut cigarettes were made by the Beech-Nut Packing Company, the same people who make the Beech-Nut gum and food products? 1899

A. I did not.

Q. 51. Did you ever hear of any of your salesmen so representing to customers that the Beech-Nut cigarettes or the Beech-Nut scrap tobacco were made by the Beech-Nut Packing Company, the manufacturers of Beech-Nut gum?

A. I did not, for one particular reason, they were instructed absolutely and under no circumstances to

1900 misrepresent at any time who made Beech-Nut cigarettes or Beech-Nut chewing tobacco.

Q. 52. What were they told to tell the consumer and the trade?

A. I had understood, in fact I had understood from Mr. Everett Meyer, who was my immediate superior in 1921, there was a little controversy between the Beech-Nut Packing Company and P. Lorillard Company relative to the name "Beech-Nut" and I took particular time to call the attention of the salesmen under my supervision to the fact that under no consideration were they to let a dealer be under the opinion the Beech-Nut chewing tobacco or cigarettes were manufactured by any other than P. Lorillard Company.

Q. 53. Now, when you in this introductory campaign sold a carton of cigarettes to a purchaser did you give him any receipt or anything?

A. Yes, sir.

Q. 54. Will you describe that receipt and what you did, just the procedure?

A. That receipt is a yellow copy of the one of our regular retail order blanks.

Q. 55. I show you some slips which are in this case as Defendant's Exhibit No. 10. Can you identify that and tell me what it is?

A. That is an order blank, a regular order blank we use every day in selling tobacco, that the salesmen use to take the order on.

Q. 56. Did you use such a blank during your campaign?

A. A blank identical to this was used through the campaign.

Q. 57. Just tell us how you operated it in your territory?

A. Well, sir, each division manager I expect—

Q. 58. (Interrupting.) Just what you did.

A. What I did and what all of my salesmen were instructed to do when he sold an order for cash was to put his date on, where it says "Jobber" he was to put in "Cash," the name of the dealer, his address and town and put sold such and such a number of Beech-Nut cigarettes, received payment so much, and then signed his name. He was to leave the white copy on a cash order with the retail dealer, retaining the tissue copy for his own reference, mailing or giving to me the yellow copy.

1903

Q. 59. And whose name appears on the white sheet and yellow sheet on that exhibit?

A. "P. Lorillard Co., Inc., 119 West 40th Street, New York, N. Y."

1904

Q. 60. As I understand from your testimony prior to the beginning of the Beech-Nut cigarette campaign, you were stationed here at Milwaukee?

A. Yes.

Q. 61. You were not selling cigarettes, is that right?

A. I was not selling cigarettes.

Q. 62. What kind of tobacco were you selling?

A. Plug and smoking tobacco.

Q. 63. Did you sell the Beech-Nut scrap tobacco?

A. Why, I did sell Beech-Nut chewing tobacco, but it was not under my supervision in 1921.

Q. 64. Just tell us how that happened?

1905

A. We sold all Lorillard Company products, regardless of whether under our supervision or not, anything manufactured by P. Lorillard Company that we could go into a store and take orders on, we took them.

Q. 65. Although it was not under your direction?

A. Although it was not under my supervision.

Q. 66. How long had you been selling Beech-Nut tobacco in this Milwaukee territory?

A. Just the Milwaukee territory or state of Wisconsin?

1906 Q. 67. State of Wisconsin.

A. I have sold it since 1916.

Q. 68. Did you ever sell any of it in such towns as Sheboygan and Manitowoc?

A. No, sir, that was a very poor scrap tobacco territory in those days, that was mostly sold in the southern part of the state.

Q. 69. Did you ever sell any up there?

A. Yes, I have sold it up there. The Prange Brothers at Sheybogan bought Beech-Nut scrap tobacco going back at least to 1918, and Reinken & Sons Company at Manitowoc, Wisconsin, bought Beech-Nut scrap, at

1907 least in 1918.

Q. 70. Now, just briefly, I understand that you have now consolidated under your charge both cigarettes, smoking and chewing tobacco, is that correct?

A. That is true.

Q. 71. When did that change or consolidation of these various subdivisions of goods take place?

A. January 1st, 1922.

Q. 72. So far the Milwaukee territory now you have charge of all of the tobacco products of P. Lorillard Company?

A. All with the exception of the Muriel cigar.

1908 Q. 73. That is, you do not include the cigars?

A. I include the little cigars.

Q. 74. But, I mean the larger.

A. No.

Direct Examination Closed.

*Cross Examination.*

1909

By Mr. Johnson:

X-Q. 75. When did you first enter the employ of the P. Lorillard Company?

A. July, 1912.

X-Q. 76. In what part of the country?

A. Indiana.

X-Q. 77. How long did you stay there?

A. Until August, 1912.

X-Q. 78. Where did you go then?

A. To Wisconsin.

X-Q. 79. In what month?

A. August, 1912.

1910

X-Q. 80. And what kind of work did they put you into here?

A. I was in what was then called the plug and smoking department.

X-Q. 81. Have you been with them ever since?

A. I have been with them ever since.

X-Q. 82. And in Wisconsin all of the time?

A. No, sir. The year of 1920 I was in Texas for the Lorillard Company.

X-Q. 83. Was that on introductory campaign work?

1911

A. No, I had charge of the northern half of the state, on the general line.

X-Q. 84. When did you become division manager in the Milwaukee district?

A. In 1921, January 1st.

X-Q. 85. Then were you division manager in the Milwaukee district at the time this Beech-Nut cigarette campaign was begun and started?

A. For the plug and smoking department, yes, sir.

X-Q. 86. When you say "division manager" you mean for just the plug and smoking department?

- 1912 A. For the plug and smoking department.  
X-Q. 87. Then you were taken off of your regular work and put on this special Beech-Nut cigarette campaign were you?  
A. I was.  
X-Q. 88. Would you mind just quickly give the names of those six men who were in your crew in Madison?  
A. E. P. Gimmig, W. L. Foley, L. W. Wilson, H. E. Buchanan, Fred Knoebber. That is all worked under my direct supervision, while there was a Mr. M. J. Schimmel who was a man of mine, but during that campaign I transferred him over to William Goldstein.
- 1913 X-Q. 89. Then for this campaign you had how many men?  
A. Only five that I really worked on that western half of the state.  
X-Q. 90. Do you know when Mr. Gimmig entered the employ of the P. Lorillard Company?  
A. It was sometime in 1920. I did not employ him myself, I cannot give you the exact date.  
X-Q. 91. Was he with you right through the Beech-Nut cigarette campaign?  
A. He was.  
X-Q. 92. Right to the finish?
- 1914 A. He was.  
X-Q. 93. Is he still in the employ of the Lorillard Company?  
A. He is not.  
X-Q. 94. Do you know when he left?  
A. Yes, sir, he resigned in February, 1922.  
X-Q. 95. Do you know why?  
A. He accepted another position.  
X-Q. 96. Do you know when Mr. Foley entered the employ of the P. Lorillard Company?  
A. He was transferred to me, but when he entered the employ I cannot tell you.

X-Q. 97. He was with the company previous? 1915

A. Previous to my coming to Wisconsin.

X-Q. 98. Was he right with you through the cigarette campaign?

A. He was.

X-Q. 99. Is he still in their employ?

A. He was three months ago. I received a letter from him, he was still in the P. Lorillard Company's employ at Los Angeles, California.

X-Q. 100. Was Mr. L. W. Wilson in the employ of the P. Lorillard Company at the time you got him for the campaign?

A. Yes, sir. 1916

X-Q. 101. Had he been with them long?

A. He had been with them about five months previous to entering upon this campaign.

X-Q. 102. Was he with you during the campaign?

A. He was.

X-Q. 103. Is he still with the P. Lorillard Company?

A. He is.

X-Q. 104. Where?

A. In La Crosse, Wisconsin.

X-Q. 105. Mr. Buchanan, do you know when he joined the P. Lorillard Company?

A. About July, 1921. 1917

X-Q. 106. Was he with you right through the campaign?

A. He was.

X-Q. 107. Is he still with the Lorillard Company?

A. He is.

X-Q. 108. Whereabouts?

A. Eau Claire, Wisconsin, is his headquarters.

X-Q. 109. Mr. Knoebber, do you know when he joined the Lorillard Company?

A. February, 1921.



1918 X-Q. 110. Was he with you right through the campaign?

A. He was.

X-Q. 111. Is he still with the company?

A. He is.

X-Q. 112. Do you know where?

A. Madison, Wisconsin, is his headquarters.

X-Q. 113. Mr. H. E. Buchanan was the newest man of that lot?

A. Yes.

X-Q. 114. Did you have any other men at all under you in that Beech-Nut cigarette campaign?

1919 A. Not in that Beech-Nut cigarette campaign, no, sir.

X-Q. 115. Or helping you in any way?

A. No, sir.

X-Q. 116. Did you ever write any notice to your salesmen that were under you to meet for instructions in getting ready, or in conducting this Beech-Nut cigarette campaign?

1920 A. Yes, I wrote them to meet me in Madison the morning we started out on this campaign. After leaving Madison I routed them so I would know what time they would get into these towns, and it was not necessary for me to write to them to meet me at any certain point.

X-Q. 117. Have you copies of these letters in your files?

A. No, I haven't, sir.

X-Q. 118. Did you ever have any occasion to write to them during the campaign instructing them to be careful in presenting these Beech-Nut cigarettes in order not to give the idea they were a product of the Beech-Nut Packing Company?

A. I had no occasion to write them on that.

X-Q. 119. Did you ever receive any letter or circular

letter from the P. Lorillard Company yourself or your salesmen to that same effect? 1921

A. I received none.

X-Q. 120. You never received any written instructions or warning at all from the Company in that regard?

A. I did not.

X-Q. 121. In regard to these order slips, I understand you have been a good many years now in the tobacco trade. Have you during that experience seen a good many order slips of the jobbers?

A. Yes, I have seen jobbers order slips.

X-Q. 122. Have you seen any jobbers order slips of a general character similar to these you have described of the Lorillard Company, with the name of the jobber at the top? 1922

A. Yes, I have seen them, but it looks nothing like that.

X-Q. 123. I don't mean exactly the same.

A. It has the jobber's name at the top, true.

X-Q. 124. Have you gotten about the country in your district and about among the dealers to a great extent since the time that these Beech-Nut cigarettes were first put on in Wisconsin?

A. I have.

1923

X-Q. 125. Have you heard any questions asked or any comments at all about whether anyone was questioning who the maker of the Beech-Nut cigarettes was?

A. No. I never saw at any time where there was any confusion about who made Beech-Nut cigarettes.

X-Q. 126. But have you had any questions asked you by dealers or consumers as to whether the Beech-Nut cigarettes were made by the same people made the Beech-Nut gum and peanut butter?

A. I never had a question of that kind put to me by a consumer in my life.

1924 X-Q. 127. Or a dealer?

A. Or a dealer.

X-Q. 128. Did you make any attempt to remember such a thing?

A. I believe I would have remembered it if it had really happened.

X-Q. 129. You never heard one single question?

A. I never heard a dealer that ever asked me—

X-Q. 130. Or a consumer?

A. Or a consumer ever asked me if the Beech-Nut Packing Company made Beech-Nut cigarettes or Beech-Nut tobacco.

1925 X-Q. 131. Did you hear any discussion on that point?

A. Well, whether I have heard Beech-Nut gum discussed along with possibly my being interested in the sale of Beech-Nut chewing tobacco and cigarettes, yes, possibly. In fact, yes.

X-Q. 132. Can you remember any of those instances?

A. Why, yes, I can remember where dealers—not only dealers, but where I am well acquainted with the dealer, in his conversation he would say, “If this Beech-Nut cigarette of yours will sell as well as your Beech-Nut tobacco it will be a good seller” and he would go on and say, “Beech-Nut gum sells well too.” There was no confusion with that dealer though, that they were made by the same company whatsoever.

1926

X-Q. 133. Did the dealer in such a case tell you there was no confusion in his mind?

A. Why, no, I don't expect him to take particular time and attention to tell me. If there wasn't any confusion naturally he wouldn't tell me.

X-Q. 134. How do you know what was in his mind?

A. I wouldn't know what was in his mind.

X-Q. 135. Did you have any such questions asked or hear any such comments or discussion in regard to the Beech-Nut scrap tobacco?

A. No, sir.

X-Q. 136. In all your experience beginning from the time they were first introduced? 1927

A. No, sir, because in that country Beech-Nut chewing tobacco was selling before we introduced Beech-Nut cigarettes.

X-Q. 137. No, but I mean in regard to the scrap tobacco, did you hear any such questions or discussions as to whether they were made by the same company, that made the Beech-Nut gum?

A. I did not.

X-Q. 138. I don't mean in 1921.

A. I know what you mean.

X-Q. 139. At any time.

1928

A. At any time I have been selling Beech-Nut chewing tobacco, I did not.

X-Q. 140. In presenting these Beech-Nut cigarettes to the trade and the public did you emphasize the quality of the cigarettes?

A. Why, you possibly mean when I am sampling the consumer?

X-Q. 141. At any time.

A. Oh, we would naturally tell them it was a good cigarette and it was a cigarette that deserved our patronage.

X-Q. 142. Did you emphasize the word "quality"? 1929

A. No, sir, I never emphasized personally the word "quality."

X-Q. 143. Has the quality of the Beech-Nut cigarette proved disappointing?

A. Well, sir, we know that Beech-Nut cigarettes are not selling as they were in 1921 when we introduced them.

X-Q. 144. Have you heard any remarks on the quality, or complaints?

A. I believe that every new cigarette ever introduced you will find so many people dislike them, and

- 1930 you will ask them why they dislike them and they have all their particular reasons why they dislike them.

Mr. Johnson: Please read the question to the witness.

(Last question read.)

A. You will hear some say they were too strong, some say they were too mild, others that they were too sweet, others say they parched their throat and burned their tongue.

- 1931 X-Q. 145. Now, about the quality of the Beech-Nut cigarettes, that is what I am interested in.

A. I have heard all of those complaints on Beech-Nut cigarettes.

X-Q. 146. How did the sales go when the Beech-Nut cigarettes were first put on?

A. During the introductory period the Beech-Nut cigarettes were selling, everyone tried them, we advertised them extensively.

X-Q. 147. Did they increase for a time?

A. They increased for a time during the introductory work, naturally they increased.

X-Q. 148. For how long?

- 1932 A. They increased all through our campaign from September to December, 1921, because we were all on introductory work there.

X-Q. 150. And after that how did the sales compare?

A. They didn't show any increase after that.

X-Q. 151. Did you find you got many repeat orders?

A. Yes, we got repeat orders.

X-Q. 152. Did you find that in order to keep the business up you had to go out and get new trade to a large extent?

A. Yes. Understand, when we were putting on the Beech-Nut cigarettes at first we only worked towns for

instance of eight hundred population or better. After covering those we went back and got the smaller towns, that is, of more varied distribution and all during that time naturally our Beech-Nut cigarettes continued to sell and sell very well. 1933

X-Q. 153. How are they selling now?

A. Well, I would say poor.

X-Q. 154. Are they selling in your district in any appreciable quantities, any considerable quantities?

A. No, I have no large buyers today on Beech-Nut cigarettes.

Cross Examination closed.

1934

*Re-direct Examination.*

By Mr Cavanagh:

R-D. Q. 155. You testified on cross examination in substance that you recollect that a dealer said to you that if the Beech-Nut cigarettes would sell as well as Beech-Nut tobacco they were alright, or something to that effect?

A. Yes, that they would be alright.

R-D Q. 156. This dealer knew you were the Lorillard man, didn't he?

1935

A. Absolutely. In fact, there is very few dealers in that section didn't know me and have known me for years.

R-D Q. 157. You are pretty well known throughout that territory?

A. I am very well known throughout that section.

R-D Q. 158. I understood you to say that the scrap tobacco was a large seller throughout that section?

A. A very large seller.

1936 R-D Q. 159. That is the Beech-Nut scrap?

A. Beech-Nut chewing tobacco, yes sir.

Re-direct examination closed.

*Re-cross Examination.*

By Mr. Johnson.

R-X Q. 160. Have you been division manager in this Milwaukee district since the Beech-Nut cigarette campaign finished?

A. Yes, sir.

1937 R-X Q. 161. I mean, did you resume your duties at the end of that campaign in December, 1921?

A. Yes.

R-X Q. 162. Did you know an employee of the P. Lorillard Company named W. C. Jackson?

A. I did.

R-X Q. 163. Do you know when he left the P. Lorillard Company?

A. I cannot give you possibly the exact date, but I can give you approximately when.

R-X Q. 164. Just approximately.

1938 A. That was about either May or June of 1922.

R-X Q. 165. Do you know why he left?

A. Yes, sir.

R-X Q. 166. Will you please tell us?

A. I discharged him.

R-X Q. 167. For what reason?

A. Because I found him incompetent.

R-X Q. 168. What month was that?

A. It was either—I believe it to be either May or June, but without my records I cannot tell you, to be exact, but it was either the fore or middle part of 1922.

R-X Q. 169. In what way in general did you find him incompetent?

A. Well, sir, it is not my purpose to run down any man, I am not going to attempt to do it here, whether Mr. Jackson says it is or not. Mr. Jackson came to me with a very good recommendation and transferred over to me, but I found his work not at all satisfactory, that is, not up to my standards. He didn't work in a way I would have him work and his actions throughout the day were not as I would have them. 1939

R-X Q. 170. Did you find any instances of his not following your instructions?

A. I did.

R-X Q. 171. Did you know a man named Monahan in the employ of the P. Lorillard Company? 1940

A. No, sir.

Re-cross examination closed.

*Re-direct Examination.*

By Mr. Cavanagh:

R-D Q. 172. Will you please state whether you ever knew Mr. Jackson or any other salesman of the P. Lorillard Company to represent the Beech-Nut cigarettes or the Beech-Nut scrap tobacco as being the product of the Beech-Nut Packing Company? 1941

A. I did not.

R-D. Q. 173. If you had ever heard of any such man, you as division superintendent, what course would you have taken?

A. I would have discharged him immediately.

Deposition closed.

Signature waived.

An adjournment is here taken to February 1st, 1923, at ten o'clock a. m.



1942

February 1st, 1923.

Met pursuant to adjournment, parties present as before.

BENJAMIN A. MOSHER, a witness produced in behalf of P. Lorillard Company, defendant, being first duly sworn, in response to interrogatories propounded to him by Mr. Preston, deposes and says, as follows:

Q. 1. Will you please state your name, age, residence and occupation?

1943

A. Benjamin A. Mosher, of legal age, 644-1st Street, occupation pharmacist.

Q. 2. And what is the address of your drug store?

A. 701 Wells Street.

Q. 3. Mr. Mosher, how long have you been located at this business address?

A. This address here since October 22nd, 1922.

Q. 4. And where were you prior to that time?

A. 327 Reed Street.

Q. 5. What was your occupation there?

A. Same thing.

1944

Q. 6. Have you handled Beech-Nut scrap tobacco?

A. Yes.

Q. 7. For how long a time, approximately, in both places?

A. Oh, about a year and a half.

Q. 8. And have you handled Beech-Nut cigarettes?

A. Yes, sir.

Q. 9. Do you know what company makes those two products?

A. Yes, sir.

Q. 10. What company?

A. Lorillard.

Q. 11. Do you handle Beech-Nut chewing gum? 1945

A. Yes, sir.

Q. 12. Will you state whether or not you were ever under the impression that Beech-Nut scrap tobacco and Beech-Nut cigarettes were manufactured by the same company makes the Beech-Nut gum?

A. No, I was never under that impression.

Q. 13. About when was it that you first put in Beech-Nut cigarettes?

A. I don't remember the exact date they came out. We put them out the first day they were distributed here, I don't remember what the day was. There was a certain time, they wouldn't sell them before that time and they all came out on the same day. 1946

Q. 14. From whom did you first purchase Beech-Nut cigarettes?

A. Badger Tobacco Company.

Q. 15. Now, will you tell us briefly in your own words what occurred when you put those cigarettes into your store?

A. Well, the Badger tobacco man happened to be here and he asked us if we were going to handle Beech-Nut cigarettes, and I had never heard of them, and he said they were going to be a big seller and that they were put out by the P. Lorillard Company and at that time he remarked they were going to have one truck which did nothing but deliver Beech-Nut cigarettes on that day. I don't remember just what day it was. That is how we happened to put them in over there. 1947

Q. 16. Mr. Mosher, did that truck deliver the cigarettes to you?

A. Yes, but I didn't see the truck.

Q. 17. Will you state whether or not the Badger Tobacco Company agent who called on you made any remark which in any way might have indicated that Beech-

1948 Nut cigarettes were put out by the same company makes the Beech-Nut gum?

A. No, he didn't make any remark.

Q. 18. Did he tell you they were manufactured by the *Lorillard Company*?

A. By the Lorillard people.

Q. 19. Will you state whether or not a Lorillard agent ever called upon you in connection with Beech-Nut cigarettes?

A. Yes, he did. I don't remember just how long after we got them in. I think it was about a month or so.

1949 Q. 20. And did you have any conversation with him at that time?

A. Yes, he asked us how they were moving and he put in the window display for us.

Q. 21. Will you state whether or not he made any remarks which could in any way be confusing as to who made the cigarettes?

A. No, he never made any.

Q. 22. Have you ever heard any remarks or comments or inquiries among your customers which indicated to your mind that any of them were under the impression the Beech-Nut scrap tobacco and Beech-Nut cigarettes were made by the same company makes the Beech-Nut gum?

1950

A. No, I have never heard such remarks. I will tell you where confusion might arise, a time when people might come and ask for Beech-Nut and you would ask, "Gum or cigarettes?" I don't know whether or not that would cause confusion. They may have asked us, "Beech-Nut cigarettes" too.

Q. 23. But you have never had any remarks which indicated confusion as to who made the respective products?

A. No, not as to who made them.

Q. 24. Will you state what you would think of a man who asked for Beech-Nut cigarettes, and wanting Beech-Nut cigarettes, would accept a package of Beech-Nut chewing gum in place of the cigarettes? 1951

A. What I would think of him? I would think he would be crazy or something or else he doesn't know what he wants, one of the two.

Q. 25. Do you regard tobacco and chewing gum as having any relation to one another?

A. None whatever.

Q. 26. Mr. Mosher, do you handle Ideal perfume?

A. Yes, sir.

Q. 27. Do you handle Ideal brushes? 1952

A. Yes, sir.

Q. 28. Will you state whether or not those two articles are made by the same concern?

A. No, they are not.

Mr. Johnson: Objection as hearsay, incompetent, irrelevant and further objection unless the labels or wrappers specified are introduced in evidence.

Mr. Preston: As has been several times stated on the record, samples of all of these labels are in the possession of counsel for Lorillard Company and will be introduced in evidence at a later date. 1953

Q. 29. (Mr. Preston.) Do you sell Red Cross toothache drops?

A. Yes, sir.

Q. 30. Do you sell Red Cross kidney plasters?

A. Yes, sir.

Q. 31. Will you state whether or not those two articles are made by the same concern?

1954 Mr. Johnson: Same objection, and it is stipulated this objection will apply to each question and answer along this line without repetition.

A. No, they are made by different concerns.

Q. 32. (By Mr. Preston.) Do you handle Velvet tobacco?

A. Yes, sir.

Q. 33. Do you handle Velvet rubber goods?

A. Yes.

Q. 34. Will you state whether or not those are made by the same concern?

1955 A. No, they are made by different concerns.

Direct Examination Closed.

*Cross Examination.*

By Mr. Johnson:

X-Q. 35. What kind of a store have you at 701 Wells Street?

A. Drug store.

X-Q. 36. Do you keep other lines besides drugs?

A. What do you mean?

1956 X-Q. 37. Name some of the characters of goods you keep besides drugs?

A. Candies, cigars, ice cream, perfume, newspapers, periodicals, hairnets, and so forth.

X-Q. 38. What kind of a store were you in at your other address?

A. Also a drug store.

X-Q. 39. Was that at 327 Reed Street?

A. Yes, sir.

X-Q. 40. Did you keep about the same lines?

A. Same thing, yes.

1528  
X-Q. 41. About what size is your store room here, 1957  
just roughly?

A. About 30X45, something like that.

X-Q. 42. Now many clerks do you have here?

A. Registered clerks or altogether?

X-Q. 43. That wait on customers.

A. Four of us.

X-Q. 44. How many do you have working at a time,  
as a rule?

A. Usually two at a time.

X-Q. 45. About how many custommers do you have  
a day? Could you make an estimate?

A. About two hundred.

1958

X-Q. 46. Do you keep a cash register?

A. Yes, sir.

X-Q. 47. Doesn't that keep a record?

A. It does, but I never pay any attention to it, al-  
though it is a good thing to pay attention to.

X-Q. 48. Did you look at yesterday's?

A. I can't, because I have never watched it since I  
have been here. Probably I have kept it back once or  
twice and meant to watch it, but I didn't do it.

X-Q. 49. Do you wait on customers yourself?

A. Yes, sir.

X-Q. 50. Does it keep you pretty busy, as a rule, 1959  
when you are on duty?

A. Well, in the evenings, but daytimes there is not  
much doing around here.

X-Q. 51. Is the store you were in before you took  
this one—did you say that was at 327 Reed Street?

A. Yes.

X-Q. 52. About what size was that property?

A. It was about 60X25.

X-Q. 53. Was it a larger store than this one?

A. It was longer, much longer.

- 1960 X-Q. 54. What was your position in that store?  
A. I was half owner.  
X-Q. 55. Did you wait on customers yourself?  
A. Yes, sir.  
X-Q. 56. How many clerks did you have there?  
A. Four.  
X-Q. 57. How many on duty at a time, as a rule?  
A. Two.  
X-Q. 58. Do you know about how many customers came in there a day?  
A. About the same amount as here.  
X-Q. 59. Did it keep you pretty busy waiting on them  
1961 when you were on duty?  
A. Fairly so, yes.  
X-Q. 60. Was any part of your business over there wholesale or jobbing?  
A. No, sir.  
X-Q. 61. Is it here?  
A. No, sir.  
X-Q. 62. Entirely retail?  
A. Retail business, yes, sir.  
X-Q. 63. Do you remember ever having talked to customers about who makes the article they are buying?  
A. Not very often.  
1962 X-Q. 64. Did you make any attempt to remember any questions that were asked or any remarks that you heard as to whether the Beech-Nut cigarettes or scrap tobacco were made by the same company that made the Beech-Nut chewing gum?  
A. No, I never heard any remarks made.  
X-Q. 65. Did you make any attempt to remember them?  
A. What do you mean, "Attempt to remember."  
X-Q. 66. Did you try to remember any such incidents?  
A. I never had any incidents like that.

X-Q. 67. Did anyone ask you to make a note of them or remember them? 1963

A. No.

X-Q. 68. When a customer comes in to make a purchase what does he do? Does he usually walk up to the counter and say, "I want a package of Camel cigarettes" for instance, put down his money and take the goods and walk out again?

A. Yes. Don't even repeat the word "cigarettes" any more.

X-Q. 69. Just "Camels"?

A. Yes.

X-Q. 70. And he doesn't as a rule say anything else? 1964

A. No.

X-Q. 71. In a case like that you have no way of knowing what he thinks about who makes the article he is buying?

A. No.

X-Q. 72. If he doesn't tell you you wouldn't know such a thing, would you?

A. No, I wouldn't know what he thought about who makes them.

X-Q. 73. Who is the man first sold you Beech-Nut cigarettes?

A. Badger Tobacco Company.

1965

X-Q. 74. Do you know the name of the man came in?

A. William Cohn, he is a part owner.

X-Q. 75. What is the nature of their business?

A. Wholesale tobacco.

X-Q. 76. Did you give him an order for Beech-Nut cigarettes the first day he came in, and offered them for sale?

A. Yes, sir.

X-Q. 77. Did he tell you at that time they were made by the P. Lorillard Company?

A. Yes.



1966 X-Q. 78. So you knew, did you, before you ever got in a package of the cigarettes that they were made by the Lorillard Company?

A. Yes, sir.

X-Q. 79. When did you first start to handle Beech-Nut scrap tobacco?

A. Beech-Nut scrap?

X-Q. 80. Yes.

A. We didn't have that until later on over there.

X-Q. 81. Later on in what?

A. Well, we didn't have it at the time we had the cigarettes.

1967 X-Q. 82. How long have you yourself been handling the Beech-Nut scrap?

A. About a year, I think.

X-Q. 83. And did you say you handled Beech-Nut cigarettes before you did the scrap tobacco?

A. Yes.

X-Q. 84. Who was the Lorillard man you have spoken of as coming in?

A. I don't know.

X-Q. 85. Didn't you know his name?

A. No.

X-Q. 86. Did you ever hear his name mentioned?

1968 A. No, sir.

X-Q. 87. Was he a Jewish fellow?

A. I don't remember. I never pay any attention to cigarette men, they come in and go, probably two or three a week.

X-Q. 88. Do you handle Camel cigarettes?

A. Yes, sir.

X-Q. 89. Have you handled many of them in your experience?

A. Yes, sir.

X-Q. 90. Can you tell me what is on the package, on the Camel cigarette package underneath the picture of the camel?

A. I can't tell, I never noticed, I don't smoke them. 1969

X-Q. 91. Have you sold a great many of these, you say?

A. Yes.

X-Q. 92. You couldn't say at all what is underneath the picture of the camel?

A. No.

X-Q. 93. Have you sold Lucky Strike cigarettes in your experience?

A. Yes.

X-Q. 94. Have you sold many of them?

A. I have sold enough, an awful lot.

X-Q. 95. Can you tell me what is underneath the red design on the label? 1970

A. No.

X-Q. 96. Have you handled the Fatima cigarettes?

A. Yes, sir.

X-Q. 97. Have you sold many of them?

A. Quite a few. That is about the order they came, Fatimas, Lucky Strikes—Fatimas not as many as the others.

X-Q. 98. But you have sold quite a few?

A. Yes.

X-Q. 99. Have you handled the packages of all these three yourself? 1971

A. Yes, sir.

X-Q. 100. Can you tell me what is underneath the picture of the lady with the scimitar on the Fatima packages?

A. No, sir.

X-Q. 101. In selling cigarettes, Mr. Mosher, did you find or have you found that people ask for them using the name of the maker?

A. Never.

X-Q. 102. Have you had people ask you when they were buying, for Lorillard's Beech-Nut cigarettes?

A. No, sir.

1972 X-Q. 103. Or Lorillard's Murad cigarettes?

A. No, sir.

X-Q. 104. Or Lorillard's Mogul cigarettes?

A. No, sir.

X-Q. 105. Or the American Tobacco Company's Lucky Strikes?

A. No, sir.

X-Q. 106. Have you found that it is the brand of the cigarette that sells the cigarette?

A. Yes.

X-Q. 107. You have found that right through, haven't you, it is the brand the people know and not the maker?

1973 A. Yes.

X-Q. 108. It is the brand the people ask for?

A. Yes, sir.

X-Q. 109. Do people ask just for Beech-Nuts or the Beech-Nut?

A. Yes, a package of Beech-Nuts.

X-Q. 110. And in a case like that, what do you do?

A. Ask them whether they want gum or cigarettes.

X-Q. 111. Do many people ask you that just for Beech-Nut?

A. Nine out of ten women will ask for Beech-Nut gum, men will probably say, "A package of Beech-Nuts."

1974 In fact, if a woman came in and asked for Beech-Nuts you would give her gum.

X-Q. 112. Have you had any remarks such as you have mentioned, as, "Are there Beech-Nut cigarettes too?"

A. No.

X-Q. 113. Can you think of any particular instances of such remarks as that from your customers?

A. No, I never heard them make those remarks.

X-Q. 114. Didn't I understand in your direct you to say that some people have made such comments as that?

A. I said there may be confusion in some people's mind, but they never expressed it to me. No doubt there may be confusion in some people's mind, but I never have run across anybody expressed it to me. 1975

X-Q. 115. How did Beech-Nut cigarettes sell when you first put them in?

A. Sold very good at first.

X-Q. 116. About how long did it continue?

A. About three months.

X-Q. 117 And about how many cigarettes a week did you sell during that time?

A. About one thousand.

X-Q. 118. How many are you selling now a week, Beech-Nut cigarettes? 1976

A. Don't sell five packages here.

X-Q. 119. How many in a package?

A. Twenty. As far as the cigarettes are concerned, some sell better in one locality and some better in another. Take over there, we never sold any Chesterfield cigarettes. Here it is one of the biggest sellers, so you can't tell by that.

X-Q. 120. You are not selling them in quantities?

A. Not here.

X-Q. 121. Do you know how it is over at the other store? 1977

A. No.

X-Q. 122. Have you heard any comments by people as to the quality of Beech-Nut cigarettes?

A. At first when they came out I heard some comments about their being pretty good cigarettes, not lately I haven't.

Cross Examination Closed.

1978

*Re-direct Examination.*

By Mr. Preston:

R-D Q. 123. Mr. Mosher, I understood you to say on cross examination that the Lorillard man that called on you in connection with Beech-Nut cigarettes did not mention his name. Can you state positively that he did not mention his name to you?

A. I don't think I said he didn't mention his name. He asked me if I knew his name. He probably introduced himself when he came in.

1979

A-D Q. 124. You meant you didn't remember his name?

A. I don't remember his name.

R-D Q. 125. Did you ever know of a food products company that made tobacco products?

A. No, sir.

R-D Q. 126. Do you use any sort of tobacco products yourself?

A. Cigars once in a while.

1980

R-D Q. 127. As a tobacco user would you prefer to have a tobacco product made by a straight tobacco company or one made by a company that made all sorts of food products as well as tobacco?

A. Well, I don't think that would make any difference, as far as that is concerned, although it would seem unusual they would make all kinds of products.

R-D Q. 128. I also understood you to say, Mr. Mosher, on cross examination, that consumers bought tobacco products because of the brand. Now, can you say that tobacco consumers don't know what company makes the brand of cigarettes they smoke?

A. No, I wouldn't say that.

Re-direct Examination Closed.

*Re-cross Examination.*

1981

By Mr. Johnson:

R-X Q. 129. Have you handled any other Beech-Nut Packing Company products besides chewing gum?

A. Not here; over there we used to have mints.

R-X Q. 130. What did you have over there, mints and lemon drops?

A. Lemon drops.

R-X Q. 131. Where were they displayed with reference to your tobacco?

A. The tobacco was on this side over there and our candy goods over here (indicating). Of course, I believe you will find some stores like here, we have our chewing gum case and mints case on the tobacco counter. Of course, we keep our mints back here, but in some cases we have them on the cigar case, we don't have them like that over there (indicating). 1982

R-X Q. 132. Did you ever make a Beech-Nut window display?

A. Yes, sir.

R-X Q. 133. Did you put any display matter of the Beech-Nut chewing gum and mints and those other hard candies you have mentioned along with the display matter of the Beech-Nut cigarettes and tobacco? 1983

A. No, sir.

R-X Q. 134. Have you ever seen a window display like that?

A. No, I have never seen it.

Re-cross Examination Closed.

1984

*Re-direct Examination.*

By Mr. Preston:

R-D Q. 135. Mr. Mosher, on top of your tobacco case have you a display of fountain pens?

A. Yes, sir.

R-D Q. 136. Have you garters displayed on the top of your fountain pen case?

A. Yes, sir.

R-D Q. 137. Have you razors displayed on top of your tobacco case?

A. Yes.

1985

Deposition Closed.

Signature waived.

### STIPULATION

It is stipulated by and between counsel for the respective parties that store run by Benjamin A. Mosher, a witness called on behalf of the P. Lorillard Company, is located about one block from the store run by William Weigel at 810 Wells Street.

1986

I. J. LINDENBAUM, a witness called on behalf of defendant, being first duly sworn, in response to interrogatories propounded to him by Mr. Preston, deposes and says, as follows:

Q. 1. Mr. Lindenbaum, what is your name, age, residence and occupation?

A. I. J. Lindenbaum, twenty-eight, residence 125-16th Street, occupation cigar manufacturer and tobacco retailer.

Q. 2. What is your business address?

1987

A. 603 Wells Street, Milwaukee, Wisconsin.

Q. 3. How long have you been engaged in the retail tobacco business?

A. Since the 1st of November, 1921.

Q. 4. At that time did you locate at your present business address?

A. No, sir, at that time I moved from 1520 Fond du Lac Avenue to 603 Wells Street.

Q. 5. Will you state whether or not your present business address is 603 Wells Street?

A. My present address, yes.

Q. 6. Do you handle Beech-Nut scrap tobacco?

1988

A. Yes, sir.

Q. 7. Do you handle Beech-Nut cigarettes?

A. Yes, sir.

Q. 8. Do you handle Beech-Nut chewing gum?

A. Yes.

Q. 9. When did you first put Beech-Nut scrap tobacco in your stock?

A. The first thing when I moved in here, November the 1st, 1921.

Q. 10. When did you first put Beech-Nut cigarettes into your stock?

A. The same day.

1989

Q. 11. Do you remember who the salesman was who first sold you Beech-Nut scrap tobacco and Beech-Nut cigarettes?

A. I believe the first man was Mr. Goldstein.

Q. 12. When Mr. Goldstein made that first visit to you did he tell you that he was a Lorillard agent?

A. Yes, sir.

Q. 13. Have you always known that Beech-Nut scrap tobacco and Beech-Nut cigarettes were products of the P. Lorillard Company?

A. Yes, sir.



1990 Q. 14. Have you ever heard any remarks or inquiries or comments among your customers which indicated in any way that they were under the impression Beech-Nut scrap tobacco and Beech-Nut cigarettes were made by the same people that made the Beech-Nut chewing gum?

A. No, sir.

Q. 15. Did you ever know of a food products concern that made tobacco products?

A. Never.

Q. 16. Did you ever know of a tobacco concern that made food products?

1991 A. No, sir.

Q. 17. Will you state whether or not you regard them as separate lines, food and tobacco?

A. Yes.

Q. 18. Mr. Lindenbaum, when Mr. Goldstein first put Beech-Nut tobacco products into your stock did he put in any advertising matter?

A. Yes.

Q. 19. What was it?

A. Beech-Nut tobacco and a lot of Beech-Nut cigarettes. I think during that time they were having a campaign on Beech-Nut cigarettes and also he put in some signs of Murads and Helmars and some others.

1992

Q. 20. Do you sell Chesterfield cigarettes?

A. Yes, sir.

Q. 21. Do you sell the Chesterfield pipe?

A. Yes.

Q. 22. Will you state whether or not those two articles are made by the same concern?

A. No, sir, Chesterfield cigarettes are made by Liggett & Meyer, Chesterfield pipes I think are made by the Lincoln Company.

Mr. Johnson: Objected to as incompetent, irrelevant and hearsay only. 1993

It is stipulated that this objection will apply to all questions and answers along this same line without repetition.

The Witness: C. P. F. is the name of the company the Chesterfield pipe is put out by.

Q. 23. (By Mr. Preston.) Will you state whether or not if you had heard any considerable number of remarks which indicated any confusion as to the maker of Beech-Nut tobacco and Beech-Nut cigarettes, you would have remembered it?

A. I would remember it, but I never heard any complaint, I never heard anybody say anything. I read sometime in the papers that the people had some trouble but as far as somebody coming around here in the store and making any complaint, I never heard any. 1994

Direct Examination Closed.

*Cross Examination.*

By Mr. Johnson:

X-Q. 24. What kind of a store have you here, Mr. Lindenbaum? 1995

A. Tobacco and cigarettes.

X-Q. 25. Do you keep anything else?

A. No, sir, only smoking supplies and I keep chewing gum and candy.

X-Q. 26. Do you do any wholesale or jobbing trade also?

A. A little, yes.

X-Q. 27. Do you manufacture cigars?

A. Yes, sir.

X-Q. 28. Where do you do that?

- 1996** A. Back of my retail store.  
X-Q. 29. What is about the size of your retail store?  
A. About 16x14.  
X-Q. 30. It is a small shop then, is it?  
A. Yes, a small, little store.  
X-Q. 31. How many clerks do you keep there?  
A. Well, don't keep any special but there is a fellow helps me out once in a while.  
X-Q. 32. How many do you keep in your store at this time, usually?  
A. One.  
X-Q. 33. About how many customers a day do you have?
- 1997** A. That is hard telling that.  
X-Q. 34. Do you know what your cash register tells you each night?  
A. Between two hundred and fifty and three hundred people, I would estimate, about that. Of course, I can't tell you just exactly.  
X-Q. 35. And what proportion of your business you do in your front shop is wholesale or jobbing?  
A. Most I do is retail.  
X-Q. 36. What proportion of it is wholesale, would you say, one half or one quarter?
- 1998** A. I don't know. Maybe one quarter.  
X-Q. 37. Are you kept pretty busy waiting on your customers?  
A. Yes, in the early mornings. Afternoons and during the day there is not much doing.  
X-Q. 38. When a person comes in to make a purchase what does he do, as a rule? Does he walk up to your counter and ask for Camel cigarettes, let us say, put down his money, take his package and go out?  
A. Yes, sir, calls for the brand that he wants and I give it to him and he goes away.

X-Q. 39. He doesn't say anything, as a rule, does he, 1993  
except to ask for what he wants?

A. He just asks for what he wants. Of course, if he stops and talks here a little, some people talk different things.

X-Q. 40. But the usual customer?

A. Yes, he comes in and asks for the brand of the article he wants and I give it to him and he goes away. That is, the majority of the people.

X-Q. 41. Can you tell from his face as he comes in or the back of his head as he goes out what he is thinking as to who makes the article he has purchased?

A. Well, sir, I don't think I could tell that, but there 2000  
is a very few people that know the article he is using, where other people are making them.

X-Q. 42. Then unless he tells you, you have no way of knowing whether there is any confusion in his mind on that subject or not, have you?

A. No, sir, but there is some people have wanted to know, for instance when he likes the brand, who are the people put up this brand.

X-Q. 43. Have you had many questions or comments in regards to the Beech-Nut cigarettes or scrap tobacco from people who wanted to know whether or wondered whether they were made by the same people, made 2001  
the chewing gum?

A. No, sir.

X-Q. 44. Have you ever heard any questions or discussion of that at all?

A. No, sir, never heard anything at all.

X-Q. 45. Did you make any attempt to remember such things if you should hear them?

A. Well, sir, if I should hear something I would remember it, but I don't think I ever heard that.

X-Q. 46. But you can't remember entirely sure, can you? You can't remember any?

- 2002 A. No, I could be sure I didn't hear that, as near as I remember I never heard any discussion or anything of the kind.
- X-Q. 47. Have you handled Camel cigarettes?
- A. Yes.
- X-Q. 48. Have you handled many of them?
- A. Plenty.
- X-Q. 49. Great quantities of them?
- A. Yes.
- X-Q. 50. Have you handled the packages yourself?
- A. Yes.
- X-Q. 51. Can you tell me what is on the front of the
- 2003 Camel cigarette package underneath the picture of the Camel? Can you tell me what is on the cigarette package underneath the camel?
- A. The Camel is there, that is all.
- X-Q. 52. No, underneath?
- A. I think it is "Camel Cigarettes," that is what it says, isn't it?
- X-Q. 53. I am asking you.
- A. Of course, I never pay any attention to that.
- X-Q. 54. Have you handled Lucky Strike cigarettes?
- A. Yes, sir.
- X-Q. 55. Have you handled many of them?
- 2004 A. Yes, sir.
- X-Q. 56. Great quantities of them?
- A. Yes.
- X-Q. 57. Have you handled the packages yourself?
- A. Yes.
- X-Q. 58. Can you tell me what is on the panel of the red device, underneath the red device?
- A. No, sir, never paid any attention to that.
- X-Q. 59. Have you handled the Fatima cigarettes?
- A. Yes, sir.
- X-Q. 60. Have you handled many of them?

A. Not so many, but we have quite a few of them, 2005  
according to the sales we make.

X-Q. 61. Have you handled the packages in your own  
hands?

A. Yes, sir.

X-Q. 62. Can you tell me what is on the front of the  
Fatima cigarette package underneath the picture of the  
woman?

A. No, sir.

X-Q. 63. You don't remember any of these?

A. No.

X-Q. 64. How long have you been in the tobacco  
business? 2006

A. You mean the retail business?

X-Q. 65. Retail business?

A. Started November 1st, 1921.

X-Q. 66. How long have you been in the tobacco  
trade?

A. In the tobacco trade I have been since 1914,  
about eight years.

X-Q. 67. What were you doing during that time?

A. Manufacturing only.

X-Q. 68. And wholesaling?

A. Yes.

X-Q. 69. How have the Beech-Nut cigarettes sold 2007  
since you put them in?

A. Very slowly.

X-Q. 70. Did they sell better at any part of the time  
than any other?

A. Well, sir, I put in once a case of Beech-Nut cig-  
arettes in the window and run a little sale of them. Of  
course, I sold quite a few. Since I took them out they  
sell very slow.

X-Q. 71. About when is that you had your largest  
sales?

A. That was around—well February, 1922, February  
or March, something like that.

2008 X-Q. 72. About how many a week did you sell during that time?

A. I think I used to sell about four or five thousand cigarettes a week.

X-Q. 73. Cigarettes?

A. Yes.

X-Q. 74. How many are you selling now?

A. Now I believe we will sell about six hundred a month, about six hundred cigarettes a month.

X-Q. 75. Have you heard any complaints on them?

A. Oh, yes, complaints. They have been made too dry or something. There is all kinds of complaints about them.

2009 X-Q. 76. Did many people buy them the second time?

A. Oh, yes, they did because there is some people I believe smoke them steady, but a very, very few.

X-Q. 77. Have you found in your experience that when a customer comes in that he very often asks for Lorillard's Beech-Nut cigarettes, or American Tobacco Company's Lucky Strikes, or Liggett & Meyers' Fatimas, or Reynolds' Camels?

A. No, sir, he just says for the brand, don't ask for the company.

2010 X-Q. 78. Have you found it is the brand that sells the cigarettes?

A. Yes, sir.

Cross Examination Closed.

*Re-direct Examination.*

By Mr. Preston:

R-D. Q. 79. Mr. Lindenbaum, will you state whether or not when you say it is the brand that sells the ciga-

rettes you mean that people buy the cigarette because of its name? 2011

By Mr. Johnson: Object to that as leading.

A. They go according to the brand, they call for the brand.

R-D Q. 80. (By Mr. Preston.) Will you state whether or not you mean by that that a man buys a Camel cigarette because its name is "Camel?"

A. Yes, sir.

By Mr. Johnson: Object to that question as leading. 2012

R-D Q. 81. (By Mr. Preston.) You use tobacco yourself, Mr. Lindenbaum?

A. Smoking?

R-D Q. 82. Yes.

A. Yes.

R-D Q. 83. Do you smoke cigars?

A. Yes.

R-D Q. 84. What brand of cigar do you smoke?

A. I smoke almost every brand in the market. I am not so particular what I get, I simply smoke the cigar I get hold of. 2013

R-D Q. 85. You smoke a cigar because you like the name of the cigar?

A. No, sir. As I said before, I don't smoke one cigar, I just smoke all different cigars to find out the different tobacco that the people are putting in there, just to find out for my own experience.

R-D Q. 86. To find out what the quality of the cigar is?

A. Yes.

R-D Q. 87. Is the name of the cigar a matter of any interest to you?



2014 A. Yes, sir, of course, if there is a name that is well advertised, you certainly like to handle this brand because the public calls for it.

R-D Q. 88. I am speaking of your experience as a consumer, not a dealer. Do you smoke a cigar because you like the name of it or because you like the tobacco that is in it?

A. Well, as I said before, I don't stick to one cigar because I like the name of it, I like the tobacco in it, but the public when they get to like a cigar they call for this certain name, whichever they like. You couldn't go to work and give them anything else, he wants this

2015 brand and you have got to give it to him.

R-D Q. 89. Mr. Lindenbaum, is Beech-Nut scrap tobacco a good seller?

A. Yes, sir, I could say that is my fourth seller.

R-D Q. 90. Do you mean your fourth seller in scrap tobacco?

A. In scrap tobacco of the leading brands.

R-D Q. 91. It is the fourth?

A. Fourth seller.

R-D Q. 92. Has there ever been any doubt in your mind as to who made Beech-Nut scrap tobacco and Beech-Nut cigarettes?

2016 A. I always know it is put up by the P. Lorillard Company.

Re-direct Examination Closed.

*Re-cross Examination.*

By Mr. Johnson:

R-X Q. 93. What other Beech-Nut Packing Company products do you keep or have you handled besides chewing gum?

A. None at all, just the only thing I handle is Beech-Nut— 2017

R-X Q. 94. Not the Beech-Nut peppermints?

A. No, sir, I don't handle the other brands.

R-X Q. 95. Where do you display your Beech-Nut chewing gum for sale with reference to the Beech-Nut cigarettes and tobacco?

A. Well, I got all of the Beech-Nut gum put in one little case. That is entirely in a different place from the cigarettes or from the tobacco, because I don't put the chewing gum and the tobacco together.

R-X Q. 96. About how far in number of feet is that from where the Beech-Nut cigarettes are? 2018

A. About six feet.

R-X Q. 97. About how far in feet from where your Beech-Nut tobacco is?

A. About the same.

R-X Q. 98. Have you made Beech-Nut window displays at any time?

A. Beech-Nut cigarettes?

R-X Q. 99. Any Beech-Nut window displays?

A. Yes, I have had some window displays of Beech-Nut cigarettes and Beech-Nut tobacco, but they never made any displays of Beech-Nut chewing gum.

R-X Q. 100. Did you ever put any chewing gum or advertising matter concerning it in the window at the same time you had the other display? 2019

A. No, because I will tell you the reason why, this gum we got to pay more money for it so therefore we are not displaying in any place where the public should see it because we have to pay more money for that and we get the same price we get for Spearmints and Juicy Fruits and the other brands of gum, so most of the time I am trying to keep away from that because it costs more money and we get the same price as for the others, and

2020 I don't see why we should go to work and pay more money and get the same price for it.

By Mr. Johnson: Object to the last part of the answer as unresponsive.

R-X Q. 101. (By Mr. Johnson) Did you find the people demand the Beech-Nut chewing gum?

A. Yes.

R-X Q. 102. Is that the reason you keep it?

A. Yes.

R-X Q. 103. They demand the Beech-Nut brand gum?

2021 A. Yes.

Re-cross Examination Closed.

*Re-direct Examination.*

By Mr. Preston:

R-D Q. 104. Why do you keep Beech-Nut scrap tobacco?

A. Because it is a good seller.

Deposition Closed.

2022 Signature Waived.

### STIPULATION

It is stipulated by and between counsel for the respective parties that the store run by I. J. Lindenbaum, a witness called on behalf of the P. Lorillard Company, is located about two blocks from the store run by William Weigel at 810 Wells Street.

An adjournment was here taken to February 2nd, 1923, at ten o'clock a. m.

2023

February 2nd, 1923, 10 A. M.

Met pursuant to adjournment, parties present as before.

JOHN GLASSPIEGEL, a witness called on behalf of the P. Lorillard Company, defendant, being first duly sworn, in response to interrogatories propounded to him by Mr. Preston, deposes and says, as follows:

Q. 1. Will you state your name, age, residence and occupation?

2024

A. John Glasspiegel, legal age, 1730 Wright Street, occupation merchant of novelties.

Q. 2. And what is the address of your store?

A. 212—3d Street.

Q. 3. Mr. Glasspiegel, you handle tobacco here, do you not?

A. Yes, sir.

Q. 4. Will you name some of the other classes of stuff you handle in your store?

A. Well, I handle tobaccos and novelties, souvenirs, watches, jewelry, leather goods, ivory wear, shaving brushes, shaving materials, razor blades, mouth organs, candy, jokers' articles, tricks, jokes and puzzles, clocks and playing cards.

2025

Q. 5. Mr. Glasspiegel, do you handle Beech-Nut scrap tobacco?

A. Yes, sir.

Q. 6. About how long have you handled that?

A. I should say in the neighborhood of about two years.

Q. 7. Do you handle Beech-Nut cigarettes?

A. Yes, sir.

2026 Q. 8. When did you first put them into your stock?

A. When they first went onto the market, about a year ago, I should judge.

Q. 9. Do you know what company manufactures Beech-Nut scrap tobacco and Beech-Nut cigarettes?

A. P. Lorillard Company.

Q. 10. Do you remember, Mr. Glasspiegel, who the salesman was first sold you Beech-Nut cigarettes?

A. William Goldstein was the fellow.

Q. 11. Will you state whether or not you knew Mr. Goldstein to be a Lorillard man?

A. Yes, sir.

2027 Q. 12. Did Mr. Goldstein leave any advertising matter with you when he made the first visit?

A. Yes, sir.

Q. 13. Will you state whether or not in introducing the Beech-Nut cigarette into your store Mr. Goldstein made any remark which in any way led you to believe that Beech-Nut cigarettes had any connection with Beech-Nut chewing gum?

A. None whatever.

Q. 14. Mr. Glasspiegel, you handle Beech-Nut chewing gum?

A. Yes, sir.

2028 Q. 15. Have you ever heard any remarks or inquiries among your customers which indicated that they were under the impression Beech-Nut chewing gum and Beech-Nut cigarettes were manufactured by the same company?

A. No, sir.

Q. 16. Did you purchase any of the Beech-Nut cigarettes for cash from Mr. Goldstein on that first visit?

A. I don't recollect whether it was for cash or whether it was shipped through a jobber.

Q. 17. Did Mr. Goldstein give you a duplicate slip of your order?

1552

A. Whenever he took an order to be shipped through a jobber I was handed a duplicate slip. I have here at present a duplicate slip from the Liggett & Meyers concern. This order was taken yesterday by their representative and it is customary for the salesman when he comes in in taking an order to give you a copy and give the other copy to the jobber. 2029

Q. 18. Mr. Glasspiegel, do you remember whether or not Beech-Nut cigarettes were ever sampled in your store?

A. Yes, sir.

Q. 19. Did you overhear any of the salesmen's talk to the consumers whom he was sampling? 2030

A. Yes, I overheard the talk.

Q. 20. Will you tell us just in your own words what you remember him to have said to those consumers?

A. In introducing the cigarette it was mentioned that the cigarette was put out by the P. Lorillard Company, the same people who make the so-called Turkish brands, it was a new brand of cigarette being introduced on the market and in the way of an introduction anybody who bought two packages was presented with a third one free.

Objection by Mr. Johnson to this question and answer as hearsay only. 2031

Q. 21. Did you ever know of a tobacco company that manufactured food products?

A. I don't know of any.

Q. 22. Do you regard food products and tobacco as in the same or different classes of products?

A. Well, that is a question. Food products is a necessity and tobacco is sort of a luxury. That is my classification of it.

Q. 23. Is Beech-Nut scrap tobacco a good seller?

- 2032 A. Well, it runs about fourth on the list.  
Q. 24. Of scrap tobaccos?  
A. Of all of the tobaccos. I only handle one scrap and that is Beech-Nut.  
Q. 25. Whose product does the name "Beech-Nut" mean to you?  
A. Well, the only concern I know of who backs the product of Beech-Nut is the P. Lorillard Company.  
Q. 26. Do you sell the Velvet tobacco?  
A. Yes, sir.  
Q. 27. Do you sell Velvet puzzles?  
A. Yes, sir.  
2033 Q. 28. Do you sell Ever-Ready razor blades?  
A. Yes, sir.  
Q. 29. Ever Ready flashlights?  
A. Yes, sir.  
Q. 30. Are those two articles made by different companies or the same?  
A. They are made by different companies.

By Mr. Johnson: Objection to these last questions as irrelevant and immaterial and object to the answers as hearsay evidence only.

- 2034 It is stipulated that this objection shall apply to each and every question asked along this same line, without repetition.

- Q. 31. (By Mr. Preston.) Mr. Glasspiegel, do you sell Ideal candy?  
A. I do.  
Q. 32. Do you sell Ideal key rings?  
A. Yes, sir.  
Q. 33. Do you sell Ideal metal tweezers?  
A. Yes, sir.

Q. 34. Are any of those Ideal products manufactured by the same company? 2035

A. No.

By Mr. Johnson: Same objection as hearsay evidence only and it is stipulated that this objection shall apply to all questions and answers along this same line, without repetition.

Q. 35. (By Mr. Preston.) Mr. Glasspiegel, do you sell Comfort matches?

A. Yes, sir.

Q. 36. Do you sell Comfort collar clips?

2036

A. Yes, sir.

Q. 37. Are they made by the same or different companies?

A. Made by different companies in different countries.

By Mr. Johnson: Objection to this in addition to above objections to the admission of this evidence unless the labels and wrappers or the goods mentioned are offered in evidence.

By Mr. Preston: As has been repeatedly stated in this record, samples of all these articles are in possession of counsel for Lorillard Company and will be introduced in evidence at a later date. 2037

Direct Examination Closed.

*Cross Examination.*

By Mr. Johnson:

X-Q. 38. Are you proprietor of this store at 212-3rd Street, Milwaukee?

A. I am.



- 2038 X-Q. 39. How long have you been proprietor?  
A. At this particular address seven years.  
X-Q. 40. Has it been the same character of store all that time?  
A. Yes.  
X-Q. 41. What were you doing before that?  
A. I had another store of its kind at 420 Grand Avenue.  
X-Q. 42. Store of similar kind?  
A. Same nature.  
X-Q. 43. How long did you have that?  
A. A year and a half, or rather eight months to be exact.  
2039 X-Q. 44. Have you been in any other businesses?  
A. Well, previous to that I followed up the newspaper business.  
X-Q. 45. Have you ever been in the tobacco business exclusively?  
A. No.  
X-Q. 46. About what is the size of your store at 212-3rd Street?  
A. About 20x50.  
X-Q. 47. Have you a tobacco, cigar and cigarette stand in that store?  
2040 A. Yes, sir.  
X-Q. 48. Where is it located in that store?  
A. In the most prominent place.  
X-Q. 49. Describe, if you please, in what portion of the store?  
A. It is in the northwest corner of the store, taking up approximately ten foot by six foot.  
X-Q. 50. Do you do any wholesale or jobbing business in cigarettes or tobacco?  
A. We wholesale at retail prices.  
X-Q. 51. How many clerks do you have in the store?  
A. Two.

X-Q. 52. How many on duty at a time?

2041

A. Two.

X-Q. 53. Is that besides yourself?

A. Yes, sir.

X-Q. 54. Do you wait on the counter yourself?

A. Yes, sir.

X-Q. 55. How many clerks do you keep in the store as a rule, at a time?

A. There are two here at all times and sometimes three with myself.

X-Q. 56. Have you a photograph gallery in one part of your store?

A. Yes, sir.

2042

X-Q. 57. About how many customers have you coming in here a day?

A. Between three and four hundred, as an average for the week.

X-Q. 58. Three or four hundred a day?

A. Yes, sir.

X-Q. 59. Do they keep you pretty busy?

A. Yes, sir.

X-Q. 60. Do you as a rule have any conversation with the people who come in to buy tobacco and cigarettes?

A. No, sir.

X-Q. 61. Will you please tell me what a customer who comes in for tobacco and cigarettes usually does? Does he walk up to your counter, ask for a package of Camels, let us say, put down his money, take the package and walk out?

2043

A. Yes, sir.

X-Q. 62. Does he as a rule ask you who makes the article that he is buying?

A. No, sir.

X-Q. 63. Have you heard any questions or comments or remarks as to whether the Beech-Nut scrap tobacco

2044 and Beech-Nut cigarettes are made by the Beech-Nut gum people?

A. Not to my recollection.

X-Q. 64. Have you made any attempt to remember such things?

A. No, sir.

X-Q. 65. Have you had any reason to try to remember such things?

A. No, sir.

X-Q. 66. No one ever asked you to?

A. No, sir.

2045 X-Q. 67. Then when you say you never heard any such remarks, what you mean is you don't remember hearing any?

A. I would say that I never heard the question arise as to whether both products came from the same concern or different concerns.

X-Q. 68. But you never tried to remember such things?

A. No.

X-G. 69. Didn't you say that you first bought the Beech-Nut cigarettes from Mr. Goldstein?

A. He was the one introduced the brand to me.

X-Q. 70. When was that?

2046 A. Beech-Nut cigarettes, about a year ago.

X-Q. 71. About a year ago this month?

A. I wouldn't say this month, I would say approximately about a year ago.

X-Q. 72. Did you buy from him the first time he came in offering them for sale?

A. I can't remember.

X-Q. 73. Now then, this time you described, when he came in, you are not sure whether that is the first time or not, are you? This time you described on direct examination?

A. The first time he approached me with the question of Beech-Nut cigarettes, I don't know whether I bought from him the first time or not. 2047

X-Q. 74. Did Mr. Goldstein ever sample Beech-Nut cigarettes in your store?

A. Yes.

X-Q. 75. What did Mr. Goldstein say when he was sampling Beech-Nut cigarettes in your store?

A. His remark was he was representing the P. Lorillard concern, the same people who had a national reputation as distributors and manufacturers of Turkish brands.

X-Q. 76. Did he say that to you? 2048

A. He said that to the customers, as they came in.

X-Q. 77. When was that?

A. About a year ago.

X-Q. 78. Could you name any particular time when he was doing that in your store?

A. Well, Saturday, before dinner. I don't remember the exact date.

X-Q. 79. And about what month?

A. I couldn't say exactly the month, I should say about a year ago January or February.

X-Q. 80. Were you waiting on customers at the time?

A. Yes, sir. 2049

X-Q. 81. How long did you say your store is?

A. About 20—50—20 wide by 50 long.

X-Q. 82. And you wait on customers in all parts of the store?

A. Yes, sir.

X-Q. 83. So during the time when Mr. Goldstein was making these remarks while sampling the Beech-Nut cigarettes you were pretty busy, weren't you, especially on a Saturday?

A. Well, I took care of the trade as the opportunity presented itself and I had assistance.

- 2050 X-Q. 84. You didn't hear everthing he said, did you?  
A. I didn't make it my business to hear it.  
X-Q. 85. And you didn't try to remember what he said, did you?  
A. No, sir.  
X-Q. 86. Have you handled Camel cigarettes?  
A. Yes, sir.  
X-Q. 87. Have you handled very many of them?  
A. Yes, sir.  
X-Q. 88. A great many?  
A. A great many.  
X-Q. 89. Have you handled the packages in your own  
2051 hands?  
A. Yes, sir.  
X-Q. 90. Can you tell me what that is on the front of the package of Camels underneath the picture of the camel?  
A. I couldn't say.  
X-Q. 91. Have you handled the Lucky Strike cigarettes?  
A. Yes, sir.  
X-Q. 92. Very many of them?  
A. Quite a lot.  
X-Q. 93. Have you handled them in your own hands?  
2052 A. Yes, sir.  
X-Q. 94. Can you tell me what is on the front of the Lucky Strike, on the package?  
A. I never took particular notice. I have seen it at times, but I didn't make it my business to remember them.  
X-Q. 95. Have you handled Fatima cigarettes?  
A. The same answer goes for the Fatima.  
X-Q. 96. You have handled a great many of them in your own hands?  
A. Quite a lot.

X-Q. 97. And cannot recall what is underneath the picture of the lady on the front of the package? 2053

A. I can't remember.

X-Q. 98. How many years have you been handling tobacco and cigarettes?

A. About eight.

X-Q. 99. Do your customers ask for them by the brand? That is, do they ask for Camels or Beech-Nuts?

A. They ask for the brand, for the name, whether it is Camels, Lucky Strike, Chesterfields or Beech-Nuts, it doesn't make any difference what cigarette it is. A cigarette smoker as a rule asks for the name of the brand.

X-Q. 100. And does that same thing apply to chewing tobaccos? 2054

A. Yes, sir.

X-Q. 101. Did you ever have any customer ask you for Lorillard's Union Leader?

A. No, sir.

X-Q. 102. Or Lorillard's Moguls?

A. No, sir.

X-Q. 103. Or Lorillard's Murads?

A. No, sir.

X-Q. 104. Or American Tobacco Company's Lucky Strikes?

A. No, sir.

2055

X-Q. 105. You never heard any customer ask for cigarettes or tobaccos by the name of the maker?

A. No, sir.

X-Q. 106. Have you found then that tobacco and cigarettes sell by the brands?

A. I have found that tobaccos and cigarettes sold by the title.

X-Q. 107. Do you handle Beech-Nut chewing gum?

A. Yes, sir.

X-Q. 108. How long have you handled it?

A. About a year.

2056 X-Q. 109. Do you handle any other of the Beech-Nut Packing Company's goods, such as mints or hard candies?

A. No, sir.

X-Q. 110. Did you ever handle any of them?

A. No, sir, not to my knowledge.

X-Q. 111. Did you ever handle any other Beech-Nut Packing Company goods besides the chewing gum?

A. I am not familiar with the Beech-Nut Packing Company's nor do I know of any of their products outside of the chewing gum, since you mention it.

2057 X-Q. 112. Did you ever use any of the Beech-Nut products outside of the three you have mentioned, in your home?

A. Not to my knowledge.

X-Q. 113. How long have you known about the Beech-Nut chewing gum?

A. That is a mighty hard question.

X-Q. 114. Did you know about it before you stocked it?

A. It is possible that I have.

2058 X-Q. 115. Have you seen advertising of the Beech-Nut Packing Company, such as Beech-Nut peanut butter, Beech-Nut jams, Beech-Nut bacon, Beech-Nut chewing gum, in magazines, newspapers and billboards, streets cars and such places?

A. Yes, sir.

X-Q. 116. You know then that there are a great number of Beech-Nut products of the character I have just mentioned on the market, don't you?

A. My knowledge of the particular brands, such as "Beech-Nut" is very limited.

X-Q. 117. But you have seen this advertising?

A. I have seen one or two of the ads you mention.

X-Q. 118. Showing a varied line of goods put out under the Beech-Nut name?

A. Not a varied line, I say my knowledge is limited 2059  
under those brands, of the brands that you mention I  
know of about two or three.

X-Q. 119. When did you first put in the Beech-Nut  
scrap tobacco?

A. I have handled the Beech-Nut scrap for possibly  
three or four years. I have handled it in a little way  
previous to about two years ago. Not enough to really  
be noticeable.

X-120. Do you remember who first came in and sold  
it to you?

A. I don't know of any direct representative of any  
concern. It went in with the rest of the order to the 2060  
jobber.

X-Q. 121. Did any salesman ever come into your 2060  
store before a year ago, offering to you Beech-Nut  
scrap tobacco or cigarettes?

A. Well, I should say that the Beech-Nut scrap is  
put to me in a more direct method, about two years  
ago.

X-Q. 122. What do you mean "a more direct  
method"?

A. By a more direct method I mean there was a cer-  
tain amount of advertising, a certain amount of 2061  
sampling being done on the scrap tobacco about three  
years ago which induced me to buy through the repre-  
sentatives, the order being placed through the jobber.

X-Q. 123. Do you remember any salesman coming  
in at that particular time when you were seeing this  
advertising, at this time you have just mentioned?

A. Yes.

X-Q. 124. Offering you the Beech-Nut Scrap tobacco?

A. Yes.

X-Q. 125. Do you remember what he said?

A. No. I do not.



2062 X-Q. 126. Did I understand that that was about two years ago?

A. On the Beech-Nut scrap?

X-Q. 127. Yes.

A. Yes.

X-Q. 128. You buy from tobacco jobbers, don't you, Mr. Glasspiegel?

A. Yes, sir.

X-Q. 129. Quite frequently?

A. Quite frequently.

X-Q. 130. Do they as a rule give you such an order slip or receipt, such as the slip you say Mr. Goldstein left you?

2063 A. The jobber doesn't issue any copy to me; in most cases I send my order in over the telephone.

Cross Examination closed.

*Re-direct Examination.*

By Mr. Preston:

R-D. Q. 131. Mr. Glasspiegel, will you state whether or not if you had heard remarks indicating that your customers thought Beech-Nut cigarettes were made by the same company made Beech-Nut gum, in any considerable number, you would have remembered it?

2064

A. Yes, sir.

R-D Q. 132. Was this sampling of Beech-Nut cigarettes in our store done shortly after you first put the cigarettes into your store?

A. Yes, sir.

R-D. Q. 133. Do you remember whether at that time there was a drive on in Milwaukee putting Beech-Nut cigarettes on the market?

A. Yes, sir.

Re-direct Examination closed.

HENRY F. WELLER.

689

*Re-cross Examination:*

2065

By Mr. Johnson:

R-X Q. 134. Was this sampling you have just referred to about a year ago?

A. About a year ago.

R-X Q. 135. And was there a big drive on at that time on the Beech-Nut cigarettes?

A. There seemed to be, yes, sir.

Deposition closed. Signature waived.

2066

State of Wisconsin )  
County of Milwaukee ) ss.:

I, HENRY F. WELLER, a Notary Public within and for the State and County aforesaid, do hereby certify that the foregoing depositions of William Goldstein, Charles Tuckwell, Michael Spheeris, John W. Smith, Maurice J. Schimmel, Daniel Paicopoulos, Albert Marks, Frank Hopewell, Benjamin A. Mosher, I. J. Lindenbaum and John Glasspiegel were taken before me in behalf of P. Lorillard Company, defendant, pursuant to notice and agreement at the office of Francis X. Boden, 1012-1013 Majestic Building, Milwaukee, Wisconsin, beginning at 2.30 o'clock P. M. January 29, 1923; that each of the aforesaid witnesses was by me duly sworn; that the testimony of said witnesses was taken by me in shorthand and thereafter reduced by me to typewriting; that the foregoing pages contain a true and accurate transcript of my stenographic notes; that the plaintiff was represented by H. McClure Johnson of Offield, Poole, Hinton & Scott; that the defendant was represented by Richard B. Cavanagh of Meyers, Cavanagh & White-

2067

2068 head and Thomas L. Preston, during the taking of said testimony; that the testimony was concluded February 2, 1923, at about 12:00 o'clock noon; and that the signature of each witness was waived; that I am not connected by blood or marriage with either of said parties or interested directly or indirectly in the matter in controversy.

I further certify that I have been paid the sum of \$388.50 for taking, transcribing and certifying the foregoing testimony, and that the same is a fair, just and reasonable charge.

2069

HENRY F. WELLER,  
Notary Public in and for  
Milwaukee County, Wisconsin.

2070

## IN THE UNITED STATES DISTRICT COURT,

## DISTRICT OF NEW JERSEY.

Beech-Nut Packing Co.,	}	In Equity No. 3056.
Plaintiff,		
vs.		
P. Lorillard Company,		
Defendant.		

IT IS STIPULATED by and between counsel for the respective parties that if FRED W. KEMP were called as a witness on behalf of P. Lorillard Company, defendant, he would testify as follows:

2072

*Direct Examination.*

My name is FRED W. KEMP, I am of lawful age, and am part owner of the Century Drug Store located in the business district of Milwaukee, Wisconsin, that is, on Third Street near Grand, and next to the Wisconsin Hotel, one of the leading hotels in Milwaukee. In this drug store we sell, besides drugs and medicines, cigars and tobacco and a great many other articles, and while employing a varied number of clerks at different times have at least eight clerks and a cashier.

2073

We sell the Beech-Nut cigarettes and the Beech-Nut chewing gum. I have never heard any comments, remarks or inquiries to the effect, or which would lead me to believe, that customers or purchasers were under the impression that the Beech-Nut cigarettes were made by the same concern that makes the Beech-Nut gum.

I am acquainted with Mr. Goldstein who formerly represented P. Lorillard Co. in Milwaukee. [During the time that the introductory drive was on on Beech-Nut cigarettes in the fall of 1921 here in Milwaukee, Mr.

2074 Goldstein called at the store at least half a dozen times and talked with me about the cigarettes, for I had put the same in the store, having first purchased them from Mr. Goldstein. He told me Lorillard was the maker of the cigarettes and in no way whatsoever misled me on the subject or made any remark which I would construe as indicating that the Beech-Nut cigarettes were made by the same people made the Beech-Nut chewing gum. When he first put in the cigarettes he left certain advertising matter at the store and put up some posters advertising the Beech-Nut cigarette.

2075 On

*Cross Examination*

he would testify

2076 This is a large and very busy store. I am in the store the greater part of the time and wait on the customers myself when the other clerks are busy. I am so busy that I haven't much opportunity to hear what the customers at the cigarette counter are saying and I have made no effort to remember any inquiries, comments, remarks or discussion in regard to whether the Beech-Nut cigarettes were made by the Beech-Nut gum people, and I had no reason to do so. I knew Mr. Goldstein before the campaign on Beech-Nut cigarettes was started in the fall of 1921, and knew that the Beech-Nut cigarettes were made by the Lorillard Company before I ever saw a package of the cigarettes themselves.

On

*Re-direct Examination*

he would testify

If I had heard any such inquiries, comments, or remarks in appreciable number or frequently, I would have remembered the same.

2077

IT IS STIPULATED by and between counsel for the respective parties that if ROBERT A. KIEFER were called as a witness on behalf of P. Lorillard Company, defendant, he would testify as follows:

*Direct Examination.*

My name is ROBERT A. KIEFER, I am of lawful age, and am proprietor of the Kiefer Drug Company, 238 West Water Street, Milwaukee, Wisconsin, which is in the business section of the city.

In this store are usually employed at least half a dozen clerks. We handle the Beech-Nut scrap tobacco and the Beech-Nut cigarettes, and I knew, even before the introductory campaign on the Beech-Nut cigarettes in Milwaukee, in the fall of 1921, that the Beech-Nut cigarettes were a product of the P. Lorillard Company.

2078

I am acquainted with Mr. Goldstein, agent for the P. Lorillard Company, and knew that Mr. Goldstein was assisting in the introduction of the Beech-Nut cigarette in Milwaukee in the fall of 1921 on behalf of P. Lorillard Company. I have never heard any comments, remarks or inquiries from customers or others to the effect, or which would lead me to believe that the Beech-Nut cigarettes were made by the same concern that manufactures Beech-Nut gum and the Beech-Nut mints.

2079

On

*Cross Examination.*

he would say:

I have a corner drug-store and have a good trade in drugs and many other lines, including tobacco and cigarettes. I am in the store most of the time and wait on

2080 customers along with my clerks. I am kept very busy and haven't much opportunity to hear anything that may be said by customers at the tobacco and cigarette counter. I have made no effort to remember any inquiries, remarks or comments with regard to whether the Beech-Nut tobacco and cigarettes are made by the same people that make the Beech-Nut gum and mints, and had no reason to do so.

On

*Re-direct Examination.*

2081 he would testify:

If I had heard any such inquiries, remarks or comments in appreciable number or frequently, I would have remembered the same.

IT IS STIPULATED by and between counsel for the respective parties that if RUDIE KORTBEIN were called as a witness on behalf of P. Lorillard Company, defendant, he would testify as follows:

*Direct Examination.*

2082

My name is RUDIE KORTBEIN, I am of lawful age, resident of Milwaukee, Wisconsin. I am the manager and buyer for the cigarette and tobacco department of the Economy Drug Company at 706 Oakland Avenue, Milwaukee, Wisconsin, which is a block or so from the grocery store of C. H. Beese located at 701 Murray Avenue, Milwaukee, Wisconsin.

I handle Beech-Nut cigarettes and Beech-Nut chewing gum. I have always known that these products were made by different companies. I first bought Beech-Nut cigarettes from a tobacco salesman in the fall of 1921.

This salesman represented himself to be an agent for the Lorillard Tobacco Company and in his conversation with me made no remark which I would construe as indicating that the Beech-Nut cigarette was made by the company which manufactures Beech-Nut chewing gum. He had advertising matter with him at the time and put up some posters advertising Beech-Nut cigarettes in my store. I bought some of the Beech-Nut cigarettes from this salesman, ordering them to be sent through a tobacco jobber, and did not pay the salesman cash for this order. I have never heard any remarks, inquiries or comments among my customers which indicated to me that they were under the impression that Beech-Nut cigarettes and Beech-Nut chewing gum were manufactured by the same concern. 2083

On

*Cross Examination.*

he would testify:

I am employed in a corner drug store in a residence district of Milwaukee. There is usually one other clerk in the store besides me. Our store handles not only drugs but toilet articles and many other lines, including candies and tobacco and cigarettes. The cigarette counter is near the front of the store, on the same side of the store with the candies. I wait on the counter and make sales to customers in all parts of the store. I am kept pretty busy and haven't much opportunity to hear what customers are saying, if anything, in the store. I have made no effort to remember any inquiries, remarks or comments as to who made the Beech-Nut cigarettes, and had no reason to do so. When I say I have heard no such inquiries, remarks or comments, I mean I do not remember having heard any. I did not know the sales- 2085



2086 man who came in to sell the Beech-Nut cigarettes the first time, and could not describe him. My store is on Oakland Avenue car line. I have never seen this same salesman since.

On

*Re-direct Examination.*

he would testify:

2087 If I had heard any such inquiries, comments, or remarks in appreciable number, or frequently, I would have remembered the same.

IT IS STIPULATED by and between counsel for the respective parties, that if J. E. BERNHEIMER were called as a witness on behalf of P. Lorillard Company, defendant, he would testify as follows:

*Direct Examination.*

2088 My name is J. E. BERNHEIMER, I am of lawful age, and I have four cigar stores in the city of Milwaukee, my main cigar store where I usually stay being at 414 East Water Street in the City of Milwaukee, which is in the downtown or business section of the city. I do a retail business exclusively in three of what I might call my branch stores, but in addition to a retail business I do a small wholesale business at the store above mentioned, that is, at 414 East Water Street.

I have handled the Beech-Nut scrap tobacco for the past four years, and it is the best selling scrap tobacco that I have. I always knew that it was made by the P. Lorillard Company. Mr. Goldstein, then connected with the P. Lorillard Company at Milwaukee, Wisconsin, in-

roduced the Beech-Nut cigarette into my stores in the fall of 1921, during the introductory campaign on this cigarette. He stated that the Lorillard Company was putting out this cigarette and I ordered them through him. I knew Mr. Goldstein before the Beech-Nut cigarette ever appeared on the market, as he was the Lorillard salesman here in Milwaukee. Mr. Goldstein, when he introduced the cigarette, left with me certain advertising matter, including posters advertising his Beech-Nut cigarettes. 2089

I knew the cigarettes were made by the Lorillard Company, and Mr. Goldstein made no remarks to me which would leave me under the impression that the Beech-Nut cigarettes were made by the Beech-Nut Packing Company. 2090

I have never heard of any comments, remarks or inquiries on the part of customers or consumers which would lead me to believe that they were under the impression that the cigarettes and scrap tobacco were made by the Beech-Nut Packing Company, or the concern that makes the Beech-Nut gum.

On

*Cross Examination*

he would testify:

2091

My main store at 414 East Water Street is a long and narrow room, the rear half of which is used for my wholesale trade and the front part for the retail. In this store I have one clerk beside myself. I am kept pretty busy and haven't much opportunity to hear what people are saying in my store. I have made no effort to remember any inquiries, remarks or comments in regard to whether the Beech-Nut cigarettes and scrap to-

2092 bacco are made by the same people make the Beech-Nut gum, and have had no reason to try to remember them.

On

*Re-direct Examination*

he would testify:

If I had heard any such inquiries, comments, or remarks in appreciable number, or frequently, I would have remembered the same.

2093

2094

## IN THE UNITED STATES DISTRICT COURT

2095

DISTRICT OF NEW JERSEY.

Beech-Nut Packing Co.,  
 Plaintiff,  
 vs.  
 P. Lorillard Company,  
 Defendant.

In Equity No. 3056.

## STIPULATIONS.

It is STIPULATED by and between counsel for the respective parties, that if RAY P. FLEMING were called as a witness on behalf of P. Lorillard Company, defendant, he would testify as follows:

2096

*Direct Examination*

I am manager of a tobacco store at 231 Cherry Street, Green Bay, Wisconsin. We had the Beech-Nut scrap tobacco on sale, to the best of my knowledge, at least as early as May, 1917, and I make this statement because I went into the United States army in May, 1918, and we had the scrap on sale for a year before that. We had the Beech-Nut gum on sale before 1918, and we had the scrap tobacco on sale before we had the Beech-Nut gum on sale. This is the reason for fixing the date at about May, 1917, or prior thereto. I first bought the scrap tobacco from Johannes Bros. at Green Bay and it is the best selling scrap tobacco we have had, with Mail Pouch second. I know that the scrap tobacco is made by P. Lorillard Company and I never had any comments or inquiries from customers or consumers which would lead me to believe they thought the Beech-Nut scrap tobacco was made by the same concern makes the Beech-Nut chewing gum.

2097

2098 On

*Cross Examination*

he would testify:

I have a small store in which I sell tobacco, cigars, cigarettes and small confections exclusively. I have been in the tobacco business for a number of years. I do not remember what salesman first came in with the Beech-Nut scrap tobacco or first sold it to me. That was so long ago that I cannot remember the details except I got it from Johannes Bros. I look after my store myself and wait on customers. I am kept pretty busy. I have made no efforts to remember any inquiries, remarks or comments as to who made the Beech-Nut scrap tobacco and had no reason to do so.

On

*Re-direct Examination*

he would testify:

If I had heard any such inquiries, comments, or remarks in appreciable number or frequently, I would have remembered the same.

1100

IT IS STIPULATED by and between counsel for the respective parties, that if RAY VAN ROSMALEN were called as a witness on behalf of P. Lorillard Company, defendant, he would testify as follows:

*Direct Examination.*

My name is RAY VAN ROSMALEN, I keep a tobacco store at 432 Monroe Avenue, South, Green Bay, Wisconsin. I know the Beech-Nut scrap tobacco and I know it to be a

product of the Lorillard Company, as I had this scrap tobacco on sale for about two years before Mr. Marks' crew came through Green Bay on a drive on this Beech-Nut scrap tobacco in the year 1919. I have had the Beech-Nut cigarettes on sale since the campaign on the same in the fall of 1921, and so far as I know I believe I am the first one in Green Bay who put in these Beech-Nut cigarettes. I also have Beech-Nut gum for sale. I am acquainted with Mr. Marks and know him to be a salesman for the Lorillard Tobacco people. When the salesman or agent introduced the Beech-Nut cigarette in the fall of 1921 he also had certain advertising matter advertising this cigarette, with him, and put same up in my store. He made no misrepresentations to me which would lead me to believe or leave me under the impression that the Beech-Nut cigarettes were made by the same concern that makes the Beech-Nut gum, which I also handle, as stated. I have heard no comments, remarks or inquiries from customers or consumers which would lead me to believe that they thought the gum and the cigarettes or scrap tobacco were made by the same concern.

2101

2102

On

*Cross Examination*

2103

he would testify:

My store is a small tobacco store. I have been in the tobacco business for some years. I do not remember who first sold Beech-Nut scrap tobacco to me or the accompanying circumstances. I did not know the salesman who first sold me the Beech-Nut cigarettes and could not describe him except that it was not Mr. Marks, with whom I am personally acquainted. I take care of my own store and wait on customers myself. I am kept

- 2104 pretty busy and haven't much time to talk to customers. I made no effort to remember any inquiries, remarks or comments as to who made the Beech-Nut scrap tobacco or Beech-Nut cigarettes and had no reason to do so. When I say I heard no such inquiries, comments or remarks, I mean I do not remember any.

On

*Re-direct Examination*

he would testify:

- 2105 If I had heard of such inquiries, comments, or remarks in appreciable number or frequently, I would have remembered the same.

IT IS STIPULATED by and between counsel for the respective parties, that if A. G. VACLAVIC were called as a witness on behalf of P. Lorillard Company, defendant, he would testify as follows:

*Direct Examination*

- 2106 My name is A. G. VACLAVIC, of lawful age, and I am manager and buyer for the grocery and tobacco departments of the Two Rivers Mercantile Company at Two Rivers, Wisconsin, and have been for a number of years past and was during the year 1921 and 1922 and am still the buyer in these departments. I do not do a big business in the Beech-Nut scrap tobacco as we do not do much of a tobacco business and we do not handle cigars or cigarettes.

I do not recollect any Lorillard men, or crew men calling at this store to put in this cigarette during the fall of 1921. The only time that I remember a Lorillard man coming into this store to sell the Beech-Nut cigarettes

was in 1922. We did not handle the cigarettes and did not buy any, but this salesman gave us on exchange Beech-Nut scrap tobacco for Buzz tobacco, a Lorillard brand that was not moving, that was a very slow seller, in this store. He had advertising matter with him and he put some up. When he exchanged the Beech-Nut scrap for the Buzz tobacco it was plain to me that he was a Lorillard man and I knew him to be a Lorillard man. So far as I know tobacco is always sampled at my counter at the tobacco department, and I am the only man clerk there and I never said to a Beech-Nut Packing Company man, "Why don't you pass Beech-Nut cigarettes around instead of gum and mints". I have always known that the cigarettes were made by the P. Lorillard Company. 2107 2108

On

*Cross Examination*

he would testify:

The Two Rivers Mercantile Company has a large general store at Two Rivers, Wisconsin, handling clothing, kitchen supplies, small hardware, as well as groceries and many other things, and it occupies a large ground floor space. Its grocery department occupies a pretty good sized space at the rear. Our tobacco stand is small. We do not do much in tobacco and I haven't paid a great deal of attention to it. There are other clerks in the grocery and tobacco department and have been ever since the middle of 1921. We handle a number of Beech-Nut Packing Company's products, such as Beech-Nut peanut butter, Beech-Nut spaghetti and Beech-Nut jams and other Beech-Nut products. 2109

The salesman from the Beech-Nut Packing Company comes in from time to time to take our orders and has



2110 been in a good many times since September, 1921. I have not necessarily been here in the store every time a Beech-Nut Packing Company salesman has been in. I have talked a good many times with the salesman for the Beech-Nut Packing Company. I cannot be sure whether their salesman, Mr. O. M. Wesling, has been in here or not. I may have talked to Mr. Wesling, but cannot say for sure. I do not recall ever having made the remark, "Why don't you pass Beech-Nut cigarettes around instead of gum and mints", or a remark similar to that of Mr. Wesling or any other salesman, but I really can't remember.

2111

On

*Re-direct Examination.*

he would testify:

While I have said I really can't remember making such remark, the best of my present recollection is I made no such remark.

2112

## IN THE UNITED STATES DISTRICT COURT,

## DISTRICT OF NEW JERSEY.

Beech-Nut Packing Co.,

Plaintiff,

vs.

P. Lorillard Company,

Defendant.

In Equity,  
No. 3056.

## STIPULATIONS.

IT IS STIPULATED by and between counsel for the respective parties, that if E. F. PETERSEN were called as a witness on behalf of P. Lorillard Company, defendant, he would testify as follows:

*Direct Examination.*

My name is E. F. Petersen, I am a grocer by occupation and a member of the firm of Petersen Brothers conducting a grocery store at 421 North 8th Street, Manitowoc, Wisconsin, and am a brother of H. N. Petersen who testified as a witness on behalf of the Beech-Nut Packing Co. Some months before the Beech-Nut cigarette was introduced into the city of Manitowoc in the fall of 1921, I purchased an order of Beech-Nut Scrap Tobacco from a salesman who said he was from P. Lorillard Co., tobacco manufacturers, and put this Beech-Nut scrap tobacco on sale. He made no misrepresentations to me as to who was the manufacturer of this tobacco, and I never had any inquiries as to whether or not this Beech-Nut scrap tobacco was made by the Beech-Nut Packing Company, the same people

- 2116 that made Beech-Nut Food Products and the Beech-Nut Gum. I knew it was a product of P. Lorillard Co.

On

*Cross Examination.*

he would testify:

- 2117 I do not know the salesman who first sold me the Beech-Nut Scrap Tobacco; the occurrence described took place so long ago that I cannot remember exactly, but to the best of my recollection it took place as I have described; that I do not recall ever having mentioned to my wife, Mrs. Amelia Petersen, or my brother H. N. Petersen, the first visit of this Beech-Nut Scrap Tobacco salesman or what he said to me, or did, at that time; that when I am in my store I am pretty busy taking care of customers, and made no effort to remember any inquiries, comments or remarks made in regard to the Beech-Nut Scrap Tobacco, and when I say I did not hear any such inquiries, comments or remarks I mean I do not remember having heard any.

On

- 2118 *Re-direct Examination*

he would testify:

If I had heard any such inquiries, comments or remarks in appreciable numbers or frequently, such would have been impressed upon my memory.

2119

IT IS STIPULATED by and between counsel for the respective parties, that if R. ZECHEL were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

*Direct Examination.*

My name is R. Zechel, I am a druggist by profession and keep the North End Drug Store which is located on North 8th Street, Manitowoc, Wisconsin, about two blocks from the grocery store of Petersen Brothers at 421-North 8th Street, Manitowoc, Wisconsin. When the Beech-Nut cigarettes were first introduced into Manitowoc about the fall of 1921, a salesman called and I purchased a small order of these Beech-Nut cigarettes, paying cash, and this salesman put up in the store certain posters advertising these Beech-Nut cigarettes. He had these posters with him at the time. He stated he was from the P. Lorillard Company, and made no misrepresentations in this respect. Besides, since I got the cigarettes I have always known they were made by P. Lorillard Company because I saw the name of this concern on a pack of the cigarettes when they were first shown to me by the salesman.

2120

I have never heard any comments, inquiries or questions as to whether these Beech-Nut cigarettes were made by the same people that make the Beech-Nut Food Products or the Beech-Nut gum.

2121

On

*Cross Examination*

he would testify:

My drug-store is on a corner of the main street of Manitowoc. I have a good trade for the size town; I

2122 keep one clerk to wait on the counter besides myself. I am kept so busy with my customers that I hadn't much opportunity to hear or remember whether any inquiries, comments or remarks about who made the Beech-Nut cigarettes were made in my store, and I made no effort to remember such things, if they occurred. I didn't know the salesman who first sold me the Beech-Nut cigarettes and cannot describe his appearance.

On

*Re-direct Examination*

2123 he would testify:

That if there had been any appreciable or frequent inquiries, comments or remarks as to whether the Beech-Nut cigarettes were made by the same people that make the Beech-Nut gum, I would have remembered the same.

2124 IT IS STIPULATED by and between counsel for the respective parties, that if H. A. LEVENHAGEN were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

*Direct Examination.*

My name is H. A. Levenhagen, of lawful age, and I conduct a barber shop at #110 North 8th Street, Manitowoc, Wisconsin. In this barber shop I also sell Beech-Nut Scrap Tobacco, Beech-Nut Cigarettes and Beech-Nut Chewing Gum. I first bought the cigarettes from a salesman of a crew who were introducing the cigarette in the Town of Manitowoc in about the fall of 1921. He said he was salesman for P. Lorillard Com-

pany and he positively told me that the gum people did not make the cigarettes. He was perfectly open and above board about it. He had advertising matter relating to the Beech-Nut cigarette with him, and he put up some of these advertising signs in this barber shop here. My barber shop is about three blocks, on the same street, North 8th Street, from the grocery store conducted by Petersen Brothers at 421 North 8th Street, Manitowoc, Wisconsin. I have heard no comments, inquiries or remarks from people to the effect, or which would lead me to believe, that they thought the Beech-Nut cigarettes or Beech-Nut scrap tobacco were made by the same people that make the Beech-Nut chewing gum, all three of which products I handle in my barber shop. 2125

On

*Cross Examination*

he would testify: . . .

I did not know the salesman who came in the first time with Beech-Nut cigarettes and could not describe him. We had some discussion about the Beech-Nut chewing gum and the Beech-Nut cigarettes and their relation or non-relation to each other. My place of business is primarily a barber shop, but I have a cigar and tobacco and candy stand in the front part of it. I run the barber shop myself and tend the counter in front when I am there. I have made no particular effort to remember inquiries, comments or remarks as to who makes the Beech-Nut cigarettes and have never made any notes of such things. I mean, I do not remember any such inquiries, comments or remarks. 2127

2128 On

*Re-direct Examination*

he would testify:

If I had heard any such remarks frequently or in appreciable numbers I would have remembered the same.

2129

IT IS STIPULATED by and between counsel for the respective parties, that if JEROME MEYER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

*Direct Examination.*

2130

My name is Jerome Meyer, I conduct a grocery store at 435 North 7th Street about one block and a half from the grocery store of Petersen Brothers at 421 North 8th Street, Manitowoc, Wisconsin. In the fall of 1921 a salesman called upon me to have me put in Beech-Nut cigarettes, and represented himself to be from P. Lorillard Company. He made no misrepresentations as to who manufactured the cigarettes and I gave him an order for a small quantity, as I remember it a couple of cartons of these Beech-Nut cigarettes, and these were to be sent me through my jobber, and they were duly delivered through the jobber. This salesman had advertising matter relating to the Beech-Nut cigarette with him and left some of it at the store. I also handle certain products of the Beech-Nut Packing Company, such as the Beech-Nut gum and Beech-Nut Peanut Butter

I know that the Beech-Nut cigarette is made by P. Lorillard Company, and I have never heard any comments, inquiries, or questions from customers or con-

sumers to the effect, or which would lead me to believe, 2131  
that they thought that the Beech-Nut cigarette was  
made by the same people that make the Beech-Nut gum  
and the Beech-Nut peanut butter.

On

*Cross Examination*

he would testify:

I am the proprietor of the "Meyer Grocery" and deal  
in groceries, meats, bakery goods, notions, newspapers,  
candies, tobacco and cigarettes. My place of business  
is on a corner, and I keep one clerk besides myself. 2132  
Both I and my clerk wait on customers in all parts of  
the store, including the tobacco stand. I haven't a great  
deal of time to listen to remarks or discussions that  
take place in my store and have made no particular  
effort to remember any inquiries, comments or remarks  
as to who makes the Beech-Nut cigarettes. When I say  
I did not hear any inquiries, comments or remarks, I  
mean I do not remember hearing any such inquiries,  
comments or remarks. I do not know who the sales-  
man was who first came in, selling the Beech-Nut ciga-  
rettes, and I cannot describe him. 2133

On

*Re-direct Examination*

he would testify:

If I had heard any such comments, or inquiries or  
remarks frequently or in appreciable numbers I would  
have remembered the same.



- 2134 It is STIPULATED by and between counsel for the respective parties, that if ROBERT LILL were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

*Direct Examination.*

- 2135 My name is Robert Lill, of lawful age, and I conduct a small retail store and manufacture cigars at 821 South 8th Street, Manitowoc, Wisconsin. My retail store, or the place where I sell tobacco and cigarettes and cigars is in the front of the building, while I manufacture cigars of my own brand in a room in the rear of this little front room. I am in the tobacco business exclusively, and while I handle Beech Nut scrap tobacco and Beech-Nut cigarettes, I do not handle Beech-Nut gum for my business is exclusively tobacco.

I have handled the Beech-Nut scrap tobacco certainly since 1917, and I am under the impression, but cannot say for certain, some time before that. My store is three blocks from the store of Petersen Brothers, grocery store, at 421 North 8th Street, Manitowoc, Wisconsin.

- 2136 I bought Beech-Nut cigarettes of a salesman of a crew who were introducing the cigarettes in Manitowoc in the fall of 1921, and he represented himself to be a salesman of P. Lorillard Co., tobacco manufacturers. I know of the Lorillard Company and know of their products. This man left a lot of advertising matter including posters and big framed signs, one of which is a three panel wooden frame sign, and I still have this at the store. He had a lot of Beech-Nut cigarettes with him at the time. I have always known that Lorillard was the manufacturer of these cigarettes and of the Beech-Nut scrap tobacco. I know that Lorillard is an old established concern, and that it is the general custom for the Lorillard salesmen who call on me to say

whom they represent and to name other of the Lorillard brands when they introduce the cigarette. I have never heard any comments or inquiries from customers or others to the effect, or which would lead me to believe, they thought that the Beech-Nut scrap tobacco or Beech-Nut cigarettes were made by the same people make the Beech-Nut Gum or Beech-Nut Peanut Butter or other Beech-Nut food products. 2137

On

*Cross Examination*

he would testify:

2138

I don't know the salesman who first came in to sell me Beech-Nut cigarettes, and I couldn't describe him except to say that it was not Mr. Marks of the P. Lorillard Company, whom I know. My retail shop at the front of my place of business is a small place and my cigar factory adjoins it in the rear. I am a cigar-maker and employ others in my cigar manufacturing in the rear room. I wait upon the counter in my retail shop myself. I have made no particular effort to remember any remarks, comments or inquiries as to whether the Beech-Nut cigarettes were made by the same people that make the Beech-Nut gum. When I say I did not hear any such inquiries or discussion I mean I do not remember hearing any. 2139

On

*Re-direct Examination*

he would testify:

If I heard any such comments, inquiries or remarks frequently or in appreciable numbers I would have remembered the same.

2140 It is STIPULATED by and between counsel for the respective parties, that if A. MCEVENEY were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

*Direct Examination.*

2141 My name is A. McEveney, I am of lawful age, and I conduct a grocery store under the name Central Grocery, at 10th and Franklin Streets in the City of Manitowoc, Wisconsin. For several years I have been selling and am now selling Beech-Nut Scrap Tobacco and know it to be a product of P. Lorillard Company. When the Beech-Nut cigarettes were introduced into this territory in the fall of 1921, I bought some of these cigarettes from a salesman who represented himself to be from P. Lorillard Company, and he had with him certain advertising matter relating to these cigarettes. I know, and have known for years, that the P. Lorillard Company are the largest tobacco manufacturers. This salesman said that Lorillard was putting out this new Beech-Nut cigarette, and that they were the same people made the Beech-Nut scrap tobacco and other cigarettes such as the Helmar's. I have never heard any comments or inquiries or remarks from customers or consumers to the effect, or which would lead me to believe, they were under the impression that the Beech-Nut scrap tobacco or the Beech-Nut cigarettes were made by the same people who make Beech-Nut gum and the Beech-Nut peanut butter and other food products. I know of the store of Petersen Brothers on North 8th Street, this grocery store being about six blocks or so from my place of business.

2142

In my store I carry various commodities of different character bearing the same name. For example, Badger tobacco and Badger corn, Crescent Hominy and Crescent Mapleine, and I also carry White House Corn Syrup, and Black Diamond Bird Food, and Anchor

IT IS STIPULATED by and between counsel, that objection is made to that portion of the witness's stipulated testimony which refers to other named products, such as the "Crescent," "Badger," "White House," "Black Diamond" and "Anchor," aforementioned, on the ground that same is irrelevant and immaterial.

On

*Cross Examination*

he would testify:

I am the proprietor of the "Central Grocery," which is on a corner, and do a neighborhood business. My store room is pretty good sized and I keep a general line of groceries and allied goods as well as tobacco, cigars and cigarettes. I have one clerk beside myself. I attend the counter myself. I have made no particular effort to remember any inquiries, remarks or comments as to whether the Beech-Nut cigarettes and scrap tobacco are made by the same company makes the Beech-Nut gum. When I say I never heard any such inquiries, remarks or comments, I mean I do not remember any. I did not know the salesman who came in the first time to sell the Beech-Nut cigarette and I could not describe him except to say that it was not Mr. Marks, with whom I am personally acquainted.

On

*Re-direct Examination*

he would testify:

If I heard any such inquiries, remarks or comments frequently or in appreciable numbers I would have remembered the same.

2146

IN THE DISTRICT COURT OF THE  
UNITED STATES,

FOR THE DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company,	}	In Equity No. 3056.
Plaintiff,		
<i>vs.</i>		
P. Lorillard Company,		
Defendant.		

2147

DEPOSITIONS taken on behalf of P. Lorillard Company, defendant, pursuant to notice and agreement of counsel, before Alice M. Rankin, a Notary Public in and for the County of Cook and State of Illinois, acting as Special Examiner by consent of counsel, beginning on Wednesday, February 7, 1923, at 10:30 o'clock a.m., at Chicago, Cook County, Illinois.

Present:

MESSRS. CHARLES C. BULKLEY and H. MCCLURE JOHNSON, on behalf of Plaintiff;

2148

MESSRS. R. B. CAVANAGH and T. L. PRESTON, on behalf of defendant.

WHEREUPON the following proceedings were had:

## STIPULATION.

IT IS HEREBY STIPULATED by and between counsel for the respective parties to the above entitled cause that the following depositions to be taken on behalf of P. Lorillard Company, defendant, may be taken by Alice M. Rankin in shorthand and be later transcribed by her into typewriting.

2149

WADE H. BROWN, a witness called on behalf of the defendant, P. Lorillard Company, having been first duly sworn, testified as follows:

*Direct Examination.*

By Mr. Cavanagh:

Q. 1. State your name, age, residence and occupation.

A. My name is Wade H. Brown; I live at 4808 West End Avenue, Chicago. I am district manager for the P. Lorillard Tobacco Company.

2150

Q. 2. How long have you been employed by the P. Lorillard Company?

A. Well, I have been with P. Lorillard since July, 1912.

Q. 3. How long have you been district manager for the P. Lorillard Company?

A. Since the beginning of 1921.

Q. 4. And what territory have you for this company?

A. At the present time?

Q. 5. At the present time.

A. Well, I have from Madison Street south, the rest of Cook County, Illinois, straight west to the DuPage County line, and Lake County, Indiana.

2151

Q. 6. How long have you had this territory?

A. Well, I have had this territory since the beginning of 1922.

Q. 7. And what territory did you have before that?

A. Previous to that, the year of 1921, I had all of Cook County and Lake County, Indiana.

Q. 8. And when you had all of Cook County, in which Chicago is situated, and Lake County, what goods did you handle or species of goods did you handle for the Lorillard Company?

2152 A. In 1921?

Q. 9. Yes.

A. I had the tobacco department.

Q. 10. What do you mean by the tobacco department?

A. Well, I had the plug and smoking department. At that time the scrap tobacco was in a separate department, such as the scrap, chewing tobacco, etc.

Q. 11. Did you have any cigarettes under your control?

A. I had no cigarettes until September the 6th, 1921.

Q. 12. And then what did you have? Tell us in your own words, to shorten this examination.

2153 Q. 13. And what part did you take in this work?

A. We opened the State of Indiana on Beech-nut cigarettes September the 6th, 1921, and I worked twenty counties in Indiana from the 6th of September until the 26th of September of the same year; and on the 26th of September of 1921 we opened up the State of Illinois on Beech-nut cigarettes.

A. Of Indiana?

Q. 14. Of Indiana,—on this Beech-Nut cigarette.

A. Well, I took my crew of men which I had at the time, of six men, and we devoted all of our time to Beech-Nut cigarettes the balance,—that is, from September the 6th until vacation period,—of that year, 1921.

2154 Q. 15. When was the vacation period?

A. Well, the nearest I can say was about the 17th of December. I couldn't say just for sure.

Q. 16. So, to be brief, from September until about the middle of December?

A. Yes.

Q. 17. You were engaged in introducing the Beech-Nut cigarette on a drive or introductory campaign?

A. Yes, sir.

Q. 18. Is that correct?

A. Yes, sir.

Q. 19. And you did this with the aid of a crew? 2155

A. Yes, sir; six men.

Q. 20. Were you in charge of that crew?

A. I was in charge of that crew.

Q. 21. Now, in order to shorten this examination as much as possible, will you just give an outline or statement, in your own words, as to just precisely what practice or general scheme of work you did or followed in introducing the Beech-Nut cigarette during this introductory campaign?

A. Well, I had each and every one of my salesmen to carry a thousand Beech-Nut cigarettes to sell for cash. In addition to the tin signs which we had at the time and posters and samples, each salesman carried one carton of Beech-Nut cigarettes, as you see, of ten packages, that is, two hundred cigarettes, to sample daily. 2156

Mr. Cavanagh: The witness calls attention to a carton of Beech-Nut cigarettes.

A. Now, my instructions were to these men if they sold out the thousand Beech-Nut cigarettes they were carrying to sell for cash, to go in to the nearest jobber in their territory and pick up more and continue selling them for cash. In selling these cigarettes for cash they, of course, carried a retail order book, and they gave each and every dealer they sold a duplicate copy of the order. Now, if the retailer insisted on the cigarettes coming through the jobber, we took the order and sent the orders to the jobbers and they, in turn, filled the orders. And their instruction was, which they followed out at the time, there was a little card that said "Beech-Nut," a little advertising on it, and they opened the carton up and set it on the counter of every store they sold these cigarettes in that we sold for cash; and put up posters, tin signs in front. In other words, put all the 2157



2158    advertising we could display in that man's store and in his window.

Q. 22. I call your attention to some blanks which are fastened together,—there is also a piece of tissue paper,—and which are in this case as defendant's exhibit No. 10 and ask you if you recognize those blanks, and, if so, tell me what that exhibit is.

A. Well, this is the original order and there is a tissue we place in between the yellow and the original copy.

Q. 23. How did you work with that thing, what did you do?

A. We used a carbon in between.

2159    Q. 24. What did you have it for?

A. Take the orders for Beech-Nut cigarettes on this order blank.

Q. 25. Who did you take the orders from?

A. From the retailers.

Q. 26. Did you leave him any part of that?

A. We left him this yellow duplicate here. The salesman retained the little tissue. It remained in the order book, the white slip, where they was sold for cash, this original ordinarily was destroyed. We had no more use for it. But where the order went through the jobber, this is the order that the jobber received and the retailer received this (indicating), and the little duplicate remained in the order book,—the tissue.

2160

Q. 27. You have referred in your examination to giving instructions. Just what instructions did you give and how? Just describe the procedure.

A. My instructions to the salemen were, when they went into a store, to represent themselves as being with the Lorillard Tobacco Company, and then take out their cigarette and begin explaining the quality. For instance, we would say: "This is a Burley Virginia and a little Turkish tobacco in this cigarette, which makes a very mild blend of a cigarette, and there is no doubt but what

you will like the cigarette because we are winning on the mildness of the cigarette." And in sampling we tell the consumer that we are representing the P. Lorillard Tobacco Company, just the same as we would tell them we were representing them in calling on the trade. 2161

Mr. Johnson: Objection by Mr. Johnson to this line of testimony as to what the salesmen would do, on the ground it is hearsay evidence only.

It is stipulated that this objection shall apply to all questions and answers along this same line without repetition.

The objection is to the witness' testimony as to what the salesman for Lorillard would do or say. 2162

Q. 28. Now, how often did you give instructions to your salesmen?

A. Well, on an average of twice a week.

Q. 29. Under what circumstances? Just tell us how you did it.

A. Well, I would call them together and just tell them—give them a little talk on Beech-Nut cigarettes, and tell them to sample them thoroughly, advertise and put up their posters wherever they could possibly get them up, and by all means always to put the carton on the counter, display them up where the consumer can see them. 2163

X-Q. 30. Did you personally visit any retailers, or what we might call the trade, and sell any of these cigarettes for cash?

A. Yes.

Q. 31. And when you went in to introduce the cigarette yourself, what did you tell the retailer as to the cigarette, what was your method of introduction?

A. My method, if I was not acquainted with that retailer—I am acquainted with a lot of them—I would say:

2164 "Brown is my name. I am representing the P. Lorillard Tobacco Company. We are introducing a new cigarette, Beech-Nut, a very fine quality cigarette made of Burley Virginia, and a little Turkish tobacco." And I would explain to them about the drive and the way we were sampling thoroughly and advertising throughout the country and that the brand I had heard so far in the eastern states was going very big, and that we expected to make that brand just as big a brand as we had our Beech-Nut chewing tobacco.

Q. 32. Did you ever take part in any drive or ever personally sell the Beech-Nut chewing tobacco to the trade?

2165 A. Not when we were introducing it, because it was in a separate department.

Q. 33. Who had that department?

A. A party by the name of August Meyer.

Q. 34. Where were his headquarters?

A. Chicago.

Q. 35. Will you give me, if you can, the names of the men who constituted your crew when you were introducing the Beech-Nut cigarette in what I call the fall of 1921?

2166 A. Yes, sir. Mr. Dagen, Mr. Rehder, Mr. Browning, Mr. Burgeson, Mr. Bartel and Mr. Adams.

Q. 36. As I understand, you have just a part of Cook County and Chicago now for the Lorillard tobacco and cigarettes; is that right?

A. Yes, sir.

Q. 37. And at the present time, since 1922, you have been selling tobacco and cigarettes?

A. Yes, sir, beginning of 1922, I have sold all scrap tobacco, Beech-Nut chewing and Beech-Nut cigarettes.

Q. 38. Did you sell any Turkish cigarettes?

A. No, I never sold any Turkish cigarettes; that is in another department.

Q. 39. Who has the other part of Cook County here? 2167

A. Mr. Gay; Mr. J. Gay, Jr.

Q. 40. Where is he located?

A. 414 Rush Street.

Q. 41. Have you heard any comments, inquiries or remarks from customers or consumers to the effect or which would lead you to believe that they were under the impression that the Beech-Nut cigarettes or the Beech-Nut scrap tobacco were made by the same people that make the Beech-Nut chewing gum, Beech-Nut peanut butter and other food products?

A. Well, when I first began introducing the Beech-Nut cigarettes I had possibly a half a dozen dealers that asked me if we made the Beech-Nut gum and I told them no, we did not; that the Lorillard Tobacco Company made the Beech-Nut cigarettes, Beech-Nut chewing tobacco, Climax, Murad, Helmar and brands of that kind, and that we were in the tobacco business and not the gum or food business. 2168

Q. 42. When was it you heard these inquiries that you referred to in your last answer?

A. Well, that was during the first of our campaign. That was in,—from September, I would say, from September the 6th,—between September the 6th and December, middle of December, [December 17th, at which time we went on our vacation. 2169

Q. 43. Prior to starting the Beech-Nut cigarette drive in September, 1921, did you attend any conference or meeting with any of the officials or employees of the Lorillard Company here in Chicago?

A. Yes, sir, I did.

Q. 44. Tell us just what took place at that and under whose auspices it was held?

A. Mr. Fitzsimmons, who was in charge of the scrap department at that time all over the United States, and Mr. Edward Meyer who had charge of the plug depart-

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2170 ment and the smoking department. Would you want the territory he had?

Q. 45. You can just state in your own words. Make it as brief as you can.

A. Well, he had Indiana, Michigan, Ohio, Illinois as far south as Bloomington, Wisconsin, Minnesota and South Dakota. That was all.

Now, in this little conference I remember very distinctly Mr. Fitzsimmons making this remark: "There shouldn't be any trouble in the world of getting a wonderful distribution on Beech-Nut cigarettes at once, because Beech-Nut chewing tobacco is a well known brand  
2171 throughout nearly all the United States and a big seller, so we ought to get a thorough distribution in a very short while."

Q. 46. When you were introducing the cigarette, the Beech-Nut cigarette, with this sales crew, will you state whether or not you ever accompanied any of the members of that crew into the stores where you were attempting to sell cigarettes?

A. Absolutely. I worked with each and every one of my retail men I had on the Beech-Nut crew. I would go out and pick up a man on the streets that we had assigned him, to a certain street to work, and work with him a  
2172 half a day or maybe I would work with him a whole day occasionally and instruct him and work right with him as to just how to market this cigarette.

Q. 47. How did you find he followed your instructions when you were absent?

A. When I was with these men they carried out my instructions a hundred per cent., and I checked these men up. I would go out and check behind them to see if they were putting up the advertising and doing their work as they should.

Mr. Cavanagh: Direct examination closed.

*Cross Examination.*

2173

By Mr. Johnson:

X-Q. 48. How long have you been with P. Lorillard Company, Mr. Brown?

A. I was with them ten years last July.

X-Q. 49. Will you give, just briefly, an outline of what positions you have held with them and in what part of the country?

A. Well, from the time I was employed by Lorillard in July, 1912, I was a retail salesman for them until— Now, I can't give you the date on this.

X-Q. 50. Just approximately.

2174

A. Yes. Approximately up until, well, I would say 1916; and from 1916—

X-Q. 51. In what parts of the country during that time?

A. I was working under Edward Meyer and he had charge at that time of just Wisconsin and Illinois as far south as Bloomington, northern Pennsylvania and Michigan at that time.

X-Q. 52. Yes.

A. And up until 1916 I worked a little territory out here in the northwest corner of Illinois of eight counties, and I was promoted to be his assistant, I will say in 1916; and from then until the first of 1921 I covered that entire territory as his assistant, working with retail men who were stationed in those different states and having so many counties to work in.

2175

X-Q. 53. And what department?

A. In the plug and smoking department at that time. And the first of 1921 I was in charge of this territory, the Chicago territory, which includes Cook County and Lake County, Indiana. At that time Mr. Meyers was transferred to Boston.

2176 X-Q. 54. How long did you hold that position?

A. As his assistant?

X-Q. 55. No. As head of the—

A. Department?

X-Q. 56. Yes, sir.

A. Well, from the first of 1921 until right now, the present date. Now, the first of 1922 they split this territory and gave Mr. Gay the other part of Cook County.

X-Q. 57. Previous to the beginning of this Beech-Nut cigarette campaign, had you handled cigarettes at all?

A. No. Never handled cigarettes. That was in a separate department, cigarettes were.

2177 X-Q. 58. In regard to this crew that you have named of six men, Mr. Dagen, can you give me his initials?

A. Yes. Frank C. Dagen.

X-Q. 59. Do you know when he joined the Lorillard Company, approximately?

A. Yes. In July, 1916. But now the others I can't give you the correct date on, but I remember his because I looked it up this morning.

X-Q. 60. Let's take them in order.

A. All right.

X-Q. 61. What department had he been in?

2178 A. Well, he had been in the plug and smoking department.

X-Q. 62. Had he been working with you?

A. Yes, sir.

X-Q. 63. Is he still with the Lorillard Company?

A. Yes, sir.

X-Q. 64. Mr. Rehder, what are his initials?

A. L. O. Rehder.

X-Q. 65. Will you go back to Mr. Dagen? Do you know what his address is now?

A. His home address?

X-Q. 66. Yes.

A. No.

X-Q. 67. Does he live here?

2179

A. Yes, he lives on Wrightwood Avenue, Chicago. I have a record of that over at the office.

X-Q. 68. Do you know when Mr. Rehder joined the Lorillard Company?

A. That I cannot say because he had been with them ever since the dissolution, and that was in the fore part of 1911, I think.

X-Q. 69. He had been with them—

A. He was with them longer than I have.

X-Q. 70. A number of years?

A. Yes, a little longer than I have been with them.

X-Q. 71. What department had he been in?

2180

A. In the plug and smoking department.

X-Q. 72. Had he been working with you?

A. Oh, yes.

X-Q. 73. Is he still with the P. Lorillard Company?

A. Yes, sir.

X-Q. 74. Do you know his address now?

A. He lives on Maple Avenue; I do not know his address.

X-Q. 75. What town?

A. Chicago.

X-Q. 76. Do you know Mr. Browning's initials?

A. J. F. Browning.

2181

X-Q. 77. Do you know when he joined the Lorillard Company, just approximately?

A. Well, I would say he has been with us about two years, I would say he joined us—

X-Q. 78. You mean two years before September, 1921?

A. No, two years back; I would say he joined us in August or September, 1921.

X-Q. 79. Did you take him on special for the cigarette campaign?

A. No; no. I hired him for the plug and smoking department.



2182 X-Q. 80. Before the campaign?

A. Oh, yes.

X-Q. 81. Is he still with the Lorillard Company?

A. Yes, sir, he is still with me.

X-Q. 82. Does he live in Chicago?

A. He lives in Chicago.

X-Q. 83. Mr. Burgeson, what were his initials?

A. P. L.

X-Q. 84. Do you know when he joined the Lorillard Company?

A. He has been, I would judge Burgeson has been with us about four years, we will say. He was with us previous to the campaign.

2183 X-Q. 85. In what department?

A. Plug and smoking department.

X-Q. 86. Was he working with you?

A. Yes, sir.

X-Q. 87. Is he still with the Lorillard Company?

A. Yes, sir; he was transferred to Mr. Gay when this territory was split up the first of 1922.

X-Q. 88. Are the first three still with you in your district?

A. What is that?

X-Q. 89. The first three men we have already named,  
2184 are they still with you in your district?

A. Yes, sir. Mr. Burgeson was transferred to Mr. Gay the first of 1922 and is still with him.

X-Q. 90. What are Mr. Bartel's initials?

A. N. Bartel. His first name was Nick.

X-Q. 91. Was he with the Lorillard Company before September, 1921?

A. Yes, sir.

X-Q. 92. About how long before?

A. Well, I would say about eight months.

X-Q. 93. In what department?

A. In the plug and smoking department.

X-Q. 94. Was he working with you?

2185

A. He was at the time.

X-Q. 95. Is he still with the Lorillard Company?

A. No, sir, he is not with us.

X-Q. 96. Do you know when he left?

A. Yes. I can't give you the dates on it.

X-Q. 97. About when?

A. Well, it was in January of 1922. I am quite sure that was the month, January, 1922.

X-Q. 98. Do you know what he is with now?

A. No, I do not; I could not say.

X-Q. 99. Is he in Chicago?

A. As far as I know, he is; yes. He lives on Nelson Street, Chicago he did at the time he was with me. 2186

X-Q. 100. Do you know why he left the company?

A. Yes, sir; I discharged him for not—I went out and checked him up and I found he was not going according to my instructions; he was not putting up as much advertising as I thought he ought to, and I talked to him and told him that I expected him to put up more advertising, more sign posters and tackers; and I checked him up the second time and found that he had not gone according to my instructions, so I discharged him.

X-Q. 101. Did you have any complaints or unfavorable reports of his work during the Beech-Nut campaign? 2187

A. No, I did not.

X-Q. 102. Did you check him up to any extent at that time to see whether he was following your instructions?

A. Yes, I checked him the same as I check the other boys. I check every man that is working under my supervision at times. I make it my way to work with some of these men every week.

X-Q. 103. Did you find anything to make you question at that time whether he was following your instructions?

2188 A. No, I did not.

X-Q. 104. What are Mr. Adams' initials?

A. L. J.

X-Q. 105. Was he with the P. Lorillard Company before the cigarette campaign?

A. Yes, sir.

X-Q. 106. About how long?

A. Well, I think I hired Adams,—I am not sure about that,—in May or June, 1921.

X-Q. 107. What department was he working in?

A. Plug and smoking department?

X-Q. 108. In your district?

2189 A. Oh, yes; yes.

X-Q. 109. Is he still with the Lorillard Company?

A. No.

X-Q. 110. When did he leave?

A. He left the latter part of January, 1922. He resigned.

X-Q. 111. Do you know what he is in now?

A. He is with some insurance company here in Chicago, either the Prudential or the Mutual, I could not say; he is with either one of those insurance companies, so I have heard.

X-Q. 112. In Chicago?

2190 A. Yes.

X-Q. 113. Was he under you at the time he resigned?

A. Yes, sir.

X-Q. 114. Did you ask him to resign?

A. No, he resigned of his own request.

X-Q. 115. Did you have any dissatisfaction with him?

A. No, not a bit. I would hire him again tomorrow if I had the opportunity and had an opening.

X-Q. 116. About what percentage of cases would you say that you accompanied your salesmen into the dealers, was it a large percentage or small percentage of all their calls?

A. Oh, it would be a very small percentage because I had a great deal of detail work and things to do and see after, but the average man makes about twenty-five calls a day. Now, occasionally I would spend a day with a man, we will say we called on twenty-five dealers. Maybe the next man I worked with I would spend two hours with him; go on and pick up another man; if I don't have time that day, the chances are I would see him the next day and spend a little time with each and every one of them. 2191

X-Q. 117. Well, roughly, could you say about what percentage of their work you were able to observe yourself? 2192

A. Well, I couldn't give you anything very accurately on it. It would be a very hard proposition.

X-Q. 118. It would be a small percentage?

A. Yes. You take six men and say each man calls on twenty-five a day; that is a hundred and fifty dealers a day. Well, that week I only spend one day working with these salesmen and call on twenty-five, why, it would not be over ten per cent., I shouldn't think, Mr. Johnson. But in the meantime I call on dealers here and there systematically, wherever I happened to drop in and see how our brands are going here and there, and so forth, have posters with me and put up a poster in a man's store wherever I could. In other words, do everything I could do to promote the sale of Lorillard's brands that I am working. 2193

X-Q. 119. But from your actual observation, Mr. Brown, you really could not say, except of this small percentage of cases, as to whether your men followed your instructions or not, could you, from your actual own observation?

A. What other would I have? Now, I check up these men, Mr. Johnson, go in these stores to see that our

- 2194 cigarettes are displayed on the counter where the consumer can see them, and see our advertising up, posters and tackers and tin signs and window displays. So, naturally, you check a man and find a nice showing of advertisements and your cigarettes displayed nicely on the counter, and no complaints by any dealers that you drop in to see, you would take it for granted that work was satisfactory, wouldn't you?

Mr. Johnson: Objection by Mr. Johnson to the latter part of this answer as not responsive.

- 2195 The question was: From your own actual observation, Mr. Brown.

A. Yes.

X-Q. 120. You could not say, except as to this small percentage of men, whether your men, from your own observation, did the things and said the things that you have described that they did and said when they went in to approach a dealer, can you, from your own observation?

A. That would be impossible to do that when I would not be with them.

- 2196 X-Q. 121. Would these order slips which you have referred to on direct, which your salesman would make out for orders received on his rounds, have you seen slips, order slips of similar character used by jobbing firms, with the name of the jobber at the top, with the name of the jobber printed at the top?

A. Oh, yes, every jobber has these bills, but not of that particular type. They are larger bills.

X-Q. 122. But an order slip or a receipt for orders of a similar character, not just like that?

A. No. With their name and their address and 'phone number on it.

X-Q. 123. Yes. Did you hold meetings with your crew 2197  
from time to time?

A. Yes, sir.

X-Q. 124. About how often?

A. Well, about twice a week.

X-Q. 125. And where?

A. In the warehouse, in our offices, 414 Rush Street.

X-Q. 126. What was the purpose of those meetings?

A. The purpose was to instill a little more pep into these men and to impress on their mind that we wanted this cigarette or tobacco, whichever we happened to be working, put over and become a big seller.

X-Q. 127. Was this during the time of the Beech-Nut 2198  
cigarette campaign?

A. That we held these meetings?

X-Q. 128. Yes.

A. Yes, sir.

X-Q. 129. That is what you were referring to?

A. Yes, sir. Not only that, but during any time the head salesman with Lorillard has these little meetings with their retail men; it is quite a common occurrence to talk to their men.

X-Q. 130. Did you ever caution your men at these meetings about avoiding the appearance of presenting the Beech-Nut cigarettes as the product of the people who put out the Beech-Nut gum and Beech-Nut peanut butter, and so forth? 2199

A. You mean at the time we introduced the cigarettes?

X-Q. 131. During these meetings, during the campaign.

A. No. Here is what I instructed my men, first, last and all the time: You are representing the P. Lorillard Tobacco Company, a firm that is well established all over the entire United States, and bring out the point and identify yourself with such brands as Beech-Nut chew-

2200 ing tobacco, Murad cigarettes, Helmar, Between the Acts little cigars, and along these lines, that you are representing the P. Lorillard Tobacco Company. But later on I heard,—I couldn't say where I heard this, but I remember there was some little friction on this name, so I had a meeting, which I was having, as I said, on an average of twice a week.

X-Q. 132. About when was that?

A. What is that?

X-Q. 133. About when was this that you called this last meeting that you have referred to?

2201 A. Sometime—You mean after I had heard what little I have heard about this friction?

X-Q. 134. Yes.

A. Well, let's see. I couldn't say whether it was the last part of 1921 or the first of 1922; I could not say,

X-Q. 135. How long did this Beech-Nut cigarette campaign continue in your—

A. Department?

X-Q. 136. —district?

A. Well, it continued until the first of this year. That is now—

X-Q. 137. The first of what year?

A. 1923.

2202 X-Q. 138. You mean the special hard drive continued till the first of 1923?

A. Yes, sir. But now we didn't work last year, 1922, Beech-Nut exclusively. We worked in our tobaccos along with it. But I would say we devoted fifty per cent, of our time to Beech-Nut cigarettes during 1922.

X-Q. 139. What occurred at that special meeting that you spoke of calling after you had heard of the friction?

A. Nothing outside of the fact I told them I had heard there was a little friction, or, at least, the Beech-Nut Packing Company was trying to cause Lorillard some trouble on using that name, so I said, "Bring out

your point very thoroughly that this brand is made by the P. Lorillard Tobacco Company in every instance." I always had done that, as far as that is concerned, in introducing this to a consumer, to even a sample consumer, "We are representing the P. Lorillard Tobacco Company," and the same thing with the retailer. "We are representing the P. Lorillard Tobacco Company." 2203

X-Q. 140. Who is the sales manager for P. Lorillard Company immediately above you, who was at that time?

A. During the latter part of 1921?

X-Q. 141. Yes.

A. Mr. Edward Meyer.

X-Q. 142. Did you receive any instructions from him or any suggestions that you talk to your own men especially on that point— 2204

A. No, sir, I did not.

X-Q. 143. —to caution them not to let these cigarettes go out as the product of the Beech-Nut Company that made the gum?

A. No, sir; because we made very clear to the retailer that we were representing the P. Lorillard Tobacco Company.

X-Q. 144. Had you ever received any instructions from anyone above you to that effect, asking you to warn your men not to let the Beech-Nut cigarettes be offered to the dealers as a product of the gum company? 2205

A. No, I did not, but the Lorillard Tobacco Company would naturally think, if they had a man in charge of a division, would know, rather, that the man would represent himself to be the representative of the P. Lorillard Tobacco Company wherever he went, and his retail men would be instructed accordingly.

Mr. Johnson: Objection to the latter part of this answer as opinion only.



2206 X-Q. 145. Did you ever receive any written instructions or any circular letters from the P. Lorillard Company warning you to instruct your salesmen to be careful in that regard?

A. No, I did not.

X-Q. 146. Did you ever give the salesmen under you any written instructions to that effect?

A. No, I did not, because all of my salesmen were working out of the same office I was in, 414 Rush Street, and I would see these salesmen every morning.

2207 X-Q. 147. Then you have never issued to salesmen under you, after receiving from anyone above you in the P. Lorillard Company, any written instructions; is that right?

A. No, I have not.

X-Q. 148. What was this friction that you heard about that you have referred to?

A. Now, Mr. Johnson, I could not tell you, because it would be impossible for me to come out and tell you what it was, and I don't remember really where I got it, to tell you the truth about the matter, I thought so little about it, I was not interested.

2208 X-Q. 149. But you did think enough of it at that time to call this special meeting that you speak of and especially speak to your salesmen at that time; is that right?

A. But I did not tell them about these things. I just impressed on their mind more thoroughly to bring out the point of using the name, you are representing the P. Lorillard Tobacco Company and we are in the tobacco business and that makes these brands, Helmar, Murad, Mogul and Beech-Nut chewing tobacco.

X-Q. 150. In your instructions during the time of the Beech-Nut cigarette campaign to your salesmen, did you emphasize the quality of the Beech-Nut cigarette?

A. Yes, I emphasized it the same as I would talk quality on Beech-Nut chewing tobacco. I think brands

like Beech-Nut chewing tobacco stand for quality; brands that are tremendous sellers all over the country are bound to be quality. 2209

X-Q. 151. Then in your instructions to your salesmen, you told them to emphasize the quality of the Beech-Nut cigarettes in presenting them?

A. Absolutely.

X-Q. 152. Have you been disappointed in the quality of the Beech-Nut cigarette?

A. No, I can't say that I have.

X-Q. 153. Have you heard any complaints or remarks from users of the Beech-Nut cigarettes as to the quality?

A. Well, I have heard complaints that the brand was a little mild. Perhaps it didn't burn just like it should, but those complaints you will hear on any cigarettes, regardless of what they are. 2210

X-Q. 154. How did the Beech-Nut cigarettes sell during the campaign?

A. Well, they sold very nicely. Now, that is the first brand of cigarettes I ever worked, previous to that being in the tobacco department, but they took hold and sold pretty good.

X-Q. 155. In your own experience in placing these cigarettes have you found that you got many repeat orders? 2211

A. On Beech-Nut?

X-Q. 156. Yes, Beech-Nut cigarettes?

A. Yes, sir; absolutely.

X-Q. 157. When did the sales of Beech-Nut cigarettes in your district reach their height, would you say?

A. Well, I would say they reached their height about April, 1922.

X-Q. 158. Were they growing up gradually to that height, were the sales growing gradually to that?

A. Yes, they grew up gradually.

X-Q. 159. How are they selling now?

A. Well, they are not selling as well as they did.

2212 X-Q. 160. Are they selling well at all at the present time?

A. Well, the brand is moving. I wouldn't call it a Camel or Lucky Strike in sales, but the brand is not dead by any means. I am taking repeat orders from the jobbers on the brand now.

X-Q. 161. How do the sales now compare with the sales in your district at the time they were at the peak that you have referred to?

A. I haven't got the figures on that, Mr. Johnson, I could not give you—

X-Q. 162. You can give a general opinion?

2213 A. Well, I would say Beech-Nut is selling twenty per cent as well as they were; twenty per cent as well as they were.

X-Q. 163. During this Beech-Nut cigarette campaign, Mr. Brown, did you move about a good deal among stores and about the streets?

A. Yes, sir, I did.

X-Q. 164. And how many inquiries, comments or remarks did you hear in regard to who made the Beech-Nut cigarettes and as to whether they were made by the same people that make the Beech-Nut gum?

2214 A. Well, not over half a dozen retailers asked me that question, but here is what they asked: "Do you people make the gum?" I would say approximately six, half a dozen dealers.

X-Q. 165. Can you describe some of those instances where they occurred?

A. No, I cannot, Mr. Johnson; I could not.

X-Q. 166. Did you make any attempt to remember such inquiries, comments or remarks?

A. No; I just enlightened the man and told him we had nothing to do with the Beech-Nut gum; that it was the Lorillard Tobacco Company that made tobacco.

Mr. Johnson: Read the question, please.

2215

(The question was read.)

X-Q. 167. Did you make any attempt to remember such instances?

A. No, I did not.

X-Q. 168. Did anyone ask you to make a note or remember any such instances that might occur?

A. No, sir. In every instance where those approximately half a dozen occurred, I explained to them very thoroughly that Lorillard made Beech-Nut chewing tobacco, Murad, Helmar and those brands of tobacco; that we had nothing to do with the gum business; we were in the tobacco business, cigarette business, and not the gum business or food commodities or anything of that sort.

2216

X-Q. 169. You were pretty busy during that time, were you not?

A. Well, I was, naturally, as I am busy now. I was busy; yes, sir, I was. I manage to keep busy all the time, Mr. Johnson.

X-Q. 170. When you say that you have heard a half a dozen of such inquiries or remarks, you mean you do not remember any more than that?

A. No, I cannot. I never heard any more than that. I say approximately six; in all, half a dozen.

2217

X-Q. 171. Can you give the names of any of those six parties who have asked?

A. Oh, no. As I have just told you, I did not pay much attention to it, and explained to the dealer we were in the tobacco business and did not make gum and explained to him thoroughly what we made. I didn't pay much attention to it.

2218

*Cross Examination.*

By Mr. Bulkley:

X-Q. 172. I would like to ask you something about this friction which you say you heard about. Was it a matter of common talk among the salesmen or those connected with the Lorillard Company as to the friction?

A. No.

X-Q. 173. Wait a minute. This friction between the Beech-Nut Packing Company and the Lorillard Company?

2219

A. No, sir, it was not, by any retail men.

X-Q. 174. I guess you don't get the question.

A. Perhaps not.

Mr. Bulkley: Will you please, Miss Examiner, read the question?

(The question was read.)

X-Q. 175. I was not asking you as to the talk among retail men.

A. Yes.

X-Q. 176. But as to whether there was any talk among the Lorillard people with reference to this friction.

2220

A. Yes.

X-Q. 177. And was it a matter of general talk, quite a little talk about it?

A. No, it was not. As I said a minute ago, I couldn't tell you where I really did get it, but not from any of my retail men. I am quite sure. There would be no object in my telling you I knew where it come from, because I do not know.

X-Q. 178. You say you do know it was not from any retail men?

A. I say I am quite sure it was not from any retail man, but I can't tell you from where.

X-Q. 179. Did it come from somebody connected with the Lorillard Company? 2221

A. My friend, I don't know.

X-Q. 180. You have no recollection about it at all; is that right?

A. I do not remember where it came from, but I heard there was some kind of a friction or something of the kind, and I couldn't tell you where it came from.

X-Q. 181. And was it because of what you heard that you were so cautious in instructing your salesmen to represent themselves as Lorillard people in the sales of that Beech-Nut cigarette; is that right?

A. I impressed it on their mind a little more thoroughly. As I said, we were having these meetings about twice a week and in every instance bringing out the point: You are representing the P. Lorillard Tobacco Company. And until this date, as long as I am with the Lorillard Company, in sampling even, in sampling a man, if I offer a man on the street a sample, I say, "I am representing the P. Lorillard Tobacco Company," regardless of what else I say, bring out the name. 2222

X-Q. 182. If there was any occasion to tell him you represented the P. Lorillard Company, you would tell him that, wouldn't you?

A. Yes, sir; certainly. 2223

X-Q. 183. And you would have told him that regardless of questions—

A. I did tell him right along.

X-Q. 184. Will you wait until I complete my question?

A. Yes, sir.

Mr. Cavanagh: Don't break in on his answer.

Mr. Bulkley: Will you please read the question?

(The question was read.)

2224 X-Q. 185. What do you mean when you say you did tell them right along?

A. My instructions was to my retail men to introduce themselves as representing the P. Lorillard Tobacco Company. When you walk into a store or when you go to sample a man, introduce yourself as representing the P. Lorillard Tobacco Company. That is my first instruction to a man.

X-Q. 186. Did you tell that to these men at these tri-weekly meetings which you had?

2225 A. I told that to my men ever since I have been a head salesman: When you sample a man, tell the man that you are representing the P. Lorillard Tobacco Company and we are interested in Beech-Nut cigarette or Beech-Nut tobacco or Climax, whatever brand we may be working, and to tell him that when you call on a retail man, when you go into the store, say: I am representing the P. Lorillard Tobacco Company.

X-Q. 187. You would have told them that, to represent themselves as representing the P. Lorillard Company, whether they were selling Beech-Nut cigarettes or not, wouldn't you?

A. I did tell them, I always did tell them that; yes, sir.

2226 X-Q. 188. Yes.

A. Yes, sir.

X-Q. 189. So that you would find no occasion particularly in connection with the sale of Beech-Nut cigarettes to tell them that they represented the P. Lorillard Company, would you?

A. Not only that I would take the next meeting to impress on their mind a little more thoroughly to bring out the name Lorillard.

X-Q. 190. Now, you did this on your own initiative, did you?

A. Yes, I did.

X-Q. 191. Nobody told you to do it at all?

2227

A. No, sir.

X-Q. 192. And you did it because you said you had heard of friction between the Beech-Nut Packing Company and the Lorillard Company?

Mr. Cavanagh: The question is objected to as indefinite and we want you to refer to what portion, whether you are speaking of his general instructions to them which he gave since he has been with the cigarette company or the particular instance when he had that meeting.

Mr. Bulkley: Go ahead. Read the question.

2228

(The question was read)

X-Q. 193. Is that right?

A. Well, I did that at my meeting. I brought out this point: That you are with the Lorillard Tobacco Company. But that was nothing unusual to what I had been doing previously.

X-Q. 194. Well, what did you instruct your salesmen by way of special emphasis, having in mind the friction which you had heard about?

A. Well, I didn't say anything to them about the friction.

2229

X-Q. 195. You have said, as I understood, that in your instructions you laid special emphasis upon something?

A. Yes?

X-Q. 196. To be said or done by him in view of this friction?

A. Yes, sir.

X-Q. 197. Which you had heard of. Now, what was that special emphasis that you resorted to in instructing your salesmen?

A. Well, I just simply told them, I says in my talk: Whenever you call on a man or sample a man, bring out



2230 that point, that you represent the P. Lorillard Tobacco Company. Now, that is what I told them.

X-Q. 198. And nobody told you to do that, did they?

A. No, sir, they did not.

X-Q. 199. Over how long a period did these tri-weekly conferences last?

A. Oh, they lasted—Still have my little conferences; I talk to my boys now.

X-Q. 200. At which conferences you laid emphasis on the instructions in connection with the sale of Beech-Nut, how long did they continue?

2231 A. Well, they continued the greater part of last year, because we put fifty per cent of our efforts on Beech-Nut in 1922, I would say as a whole, roughly speaking, fifty per cent of our time was spent on Beech-Nut.

X-Q. 201. Did you have any talk with Meyer about this situation in connection with the trouble, at any time?

A. No.

X-Q. 202. Never said anything to him at all about it?

A. Mr. Meyer was transferred to Boston the first part of the year of 1922. I had no occasion to talk to him.

X-Q. 203. Ever talk to Mr. Gay about it?

A. Mr. Gay?

2232 X-Q. 204. Yes.

A. Well, since that time I perhaps have; yes, sir.

X-Q. 205. A good many times, haven't you?

A. I wouldn't say a good many times.

X-Q. 206. Did you ever talk to Mr. Gay about it at the time you had these conferences where you were instructing your salesmen with special emphasis?

A. Well, I couldn't say that I did.

X-Q. 207. Have you any recollection about it?

A. No, sir, I haven't.

X-Q. 208. Didn't you consider it a matter of some importance at that time?

1620

A. Well, I didn't because Lorillard is so well known all over the country, the entire United States, and we have got such big brands, powerful brands, that we identify ourselves with these big brands, I couldn't see where we were connected in any shape, way or form where the friction could come, if there were any. 2233

X-Q. 209. Now, Mr. Witness, I am trying to confine the cross-examination to the matter in hand here.

A. Yes, sir.

X-Q. 210. And I beg you to refrain from indulging in that which is not responsive to the question.

A. Yes, sir.

Mr. Bulkley: The Examiner is requested to read the previous question to the witness. 2234

(The record was read)

Mr. Cavanagh: This witness is instructed that he can answer his questions in any way he sees fit, irrespective of what Mr. Bulkley may or may not say. When Mr. Bulkley asks a question, you answer it to the best of your ability and as you see fit.

Do not be dictating to my witnesses how they shall answer the questions.

Mr. Bulkley: I am very glad to have that instruction on the record. 2235

Mr. Cavanagh: You are entitled to have it.

Mr. Bulkley: Read the question, please.

(The record was again read)

The Witness: I answered it, didn't I?

Mr. Cavanagh: Give him the fore part of it.

(The question was again read)

X-Q. 211. Didn't it seem to you rather an unusual thing at that time that there should be friction about the use of the word "Beech-Nut"?

A. Well, no. Beech-Nut is a nut, and I would think most anybody could use that name. I couldn't see how

2236 anyone could copyright and monopolize the name of a nut.

X-Q. 212. Well, now, what I am trying to get at with you is to ascertain whether this friction which you heard about didn't make some considerable impression on your mind at the time?

A. No, sir.

X-Q. 213 It being an unusual circumstance.

A. No, sir, it did not.

X-Q. 214. Well, it made such an impression on your mind as to cause you to give instructions to your salesmen by way of emphasis, didn't it?

2237 A. Well, yes; perhaps a little bit more so. At these meetings we had been bringing that out right along.

Mr. Bulkley: That is all.

Mr. Cavanagh: That is all.

By agreement of counsel for the respective parties, to the above entitled cause, the signature of the witness to the foregoing deposition was waived.

Whereupon a recess was taken until 2:00 o'clock p. m. of the same day.

Chicago, February 7, 1923

2:00 o'clock p. m.

Parties met pursuant to recess.

Present: Counsel as before.

JACOB GAY, JR., called as a witness on behalf of the defendant, P. Lorillard Company, having been first duly sworn, testified as follows:

*Direct Examination.*

By Mr. Cavanagh:

2240

Q.1. Please state your name, age, residence and occupation.

A. Jacob Gay, Jr.; salesman for P. Lorillard Company; age, thirty-seven; residence, 3501 Greenview Avenue, Chicago.

Q.2. How long have you been with the P. Lorillard Company?

A. Well, since the dissolution. I was with the old American Tobacco Company and went with the Lorillard Company right after the disintegration of the so called trust.

2241

Q.3. Will you state briefly at what places and in what connection you have been employed or associated with the Lorillard Company since you went with them in 1911 to the present time?

A. In 1911 I was in New Orleans until about the spring; I was a retail salesman. I was transferred to Houston, Texas, in that same capacity and worked in that vicinity about five months and was transferred to Dallas, Texas, in the same capacity the same year. I remained in Dallas until 1915, when I was promoted to head salesman and transferred to El Paso, Texas. I

2242 remained there until 1917. I was sent to St. Louis in 1918, where I remained until the second day of January, 1922. I was transferred to Chicago January 3, 1922.

Q. 4. As I understand you, you were in St. Louis from 1918 until 1922, up to the first of January, 1922?

A. Yes, sir.

Q. 5. And in what capacity?

A. In the capacity of head salesman.

Q. 6. In what department, or what kind of goods did you handle?

A. I was selling the Turkish brands, the Turkish department, the Anargyros.

2243 Q. 7. Did you have a campaign on introducing the Beech-Nut cigarettes in St. Louis?

A. Yes, sir.

Q. 8. When?

A. It began on September 26, 1922—1921, rather. I beg your pardon.

Q. 9. What, if any, active part did you take in that campaign?

A. Well, I had a crew of seven men and introduced the brand of Beech-Nut cigarettes in St. Louis and worked on it continuously until December the 16th of the same year, 1921.

2244 Q. 10. What territory did you work with that Beech-Nut cigarette on that campaign?

A. I worked St. Louis exclusively.

Q. 11. How many men did you say you had?

A. Seven.

Q. 12. Tell just what procedure or method you pursued in introducing the Beech-Nut cigarette during this campaign with this crew?

A. Well, on the morning that our campaign opened on Beech-Nut cigarettes, why, I naturally would call all my salesmen together.

Q. 13. Just what you did do. Not what you would do. What you did do.

1624

A. I called all the men together and explained to them, brought out a carton of two hundred cigarettes, showed them the packing and got each man to smoke and enlightened them on the price, which was six dollars a thousand; and explained to each man that it was a blended cigarette and that we wanted a complete distribution of the entire city. Each man was given ten cartons of two hundred each and he was supposed to sell them for cash, and as he would do that he would get instructions to put them on the counter and place advertising matter on such dealers' places. 2245

Q. 14. How often did you give such instructions?

A. Why, every day, as far as that goes; every day. 2246

Q. 15. What instructions, if any, did you give your crew as to the manner of approaching the customer in selling the cigarettes?

Mr. Johnson: Objection to that question as leading.

A. I instructed the men that the Lorillard Company was putting out the brand— You want sampling, too?

Mr. Bulkley: Go right ahead and answer in your own way. 2247

A. The Lorillard Company was putting out the brand and we were going to give it all the publicity that we possibly could.

Q. 16. Did you sell any of those cigarettes yourself during that drive or campaign?

A. Yes.

Q. 17. Now, tell me just what you would do and what you would say when you went into the store to sell a carton of those cigarettes?

A. Well, I naturally would tell the dealer—

Q. 18. What you did do.

2248 Mr. Bulkley: Wait a minute. Let the witness answer the question.

A. I am representing the Lorillard Tobacco Company and we have got a brand of cigarettes that we are putting out on your market here, twenty cigarettes in a package, retailing for fifteen cents.

Q. 19. If this customer purchased a carton of those cigarettes from you, what did you do, if anything?

A. I would put them on the counter and put a carton card in the open carton and place a poster on the window.

2249 Q. 20. I show you some slips which are in this case as defendant's exhibit No. 10. Do you recognize those, and, if so, please tell us what they are?

A. This is a slip that is torn out of our retail order book.

Q. 21. Did you ever use slips like those, and, if so, how?

A. Every day.

Q. 22. What did you do with them?

A. Write up the dealer's order and then turn them in to the jobber.

2250 Q. 23. Supposing the retailer paid you cash, what did you do?

A. Make a receipt on this and give him one and keep the other myself.

Q. 24. Will you please tell us which one you kept and which one you gave to the dealer or retailer?

A. I gave him the white slip, which is the original copy.

Q. 25. What did you do with the other slips? Just tell us how you used them.

A. Left them in the book. Just remained in the retail order book.

Q. 26. If a man did not pay you cash, what did you do with his order? 2251

A. Mailed it to the jobber.

Q. 27. What jobber?

A. This jobber that he specified he wanted his merchandise through.

Q. 28. Who were these men you had on the crew at that time, can you name them?

A. I think I have a list here. I can't give the initials of all of them.

Q. 29. Give us what information you can.

A. O'Brien is one.

2252

Mr. Johnson: If you can, give his initials.

Mr. Cavanagh: He said he could not give initials.

A. Not all of them. I can give you O'Brien's initials.

Mr. Johnson: Whatever ones you have. It will save some questions.

A. W. P. O'Brien. White; I can't give his initials. Carsten, Rumpf, Quince, Imhoff. And there was another; I can't recall his name, but I think it was Andrews. However, he did not remain very long.

2253

Q. 30. Did you personally accompany any of these salesmen when they called upon the retail trade in introducing this cigarette?

A. You mean did I go with any of them?

Q. 31. Into the stores; yes.

A. Yes, sir.

Q. 32. Well, about how often?

A. Well, every once in a while I would work with the different men, say about every third day I would be with a different man.



2254 Q. 33. Did you ever hear of any comments or inquiries or remarks by consumers to the effect or which would lead you to believe that they thought that the Beech-Nut cigarette or Beech-Nut scrap tobacco was made by the same concern that makes the Beech-Nut gum, peanut butter or other food products?

A. No.

Mr Cavanagh: Direct examination closed.

#### STIPULATION.

2255 It is agreed that when the witness refers to a carton of cigarettes in his direct examination he is speaking of a carton of Beech-Nut cigarettes, of a pasteboard box of two hundred cigarettes and such as has been heretofore introduced in evidence in this case as Defendant's Cross Exhibit No. 4.

#### *Cross Examination.*

By Mr. Johnson:

2256 X-Q. 34. In about what percentage of cases, Mr. Gay, did you accompany your salesmen when they went into the dealers' stores to offer the cigarettes for sale?

A. Well, that is a difficult matter. I cannot answer that directly, because I am with them occasionally and I never keep any record of that.

X-Q. 35. But was it half the time?

A. No.

X-Q. 36. A quarter of the time?

A. No. I couldn't say—You mean any particular one salesman or with—

X-Q. 37. No, with reference to any of the salesmen, your entire crew?

A. I will say three days in a week I was with salesmen; that would give half of the time. 2257

X-Q. 38. But of all of the number of times they went into stores to offer Beech-Nut cigarettes for sale, was it a very large proportion of the cases that you accompanied the salesmen and saw what he was doing and heard what he was saying?

A. No.

X-Q. 39. It was only a small number of the cases in which you were able to accompany him?

A. There was no set time because—

X-Q. 40. You could not be with your salesmen a great deal of the time, could you? 2258

A. Could not be with them any regular portion of the time; no.

X-Q. 41. Now, of the seven men on your crew that you have given the names of, was Mr. W. P. O'Brien with the Lorillard Company before this Beech-Nut cigarette campaign was started?

A. Yes.

X-Q. 42. About how long?

A. Over a year, I know.

X-Q. 43. In what department?

A. In the Turkish department, cigarette department. 2259

X-Q. 44. Had he been working with you in your district?

A. Yes.

X-Q. 45. Is he still with the Lorillard Company?

A. I think he is.

X-Q. 46. Do you know where he is?

A. At St. Louis, if he is still with the company.

X-Q. 47. Mr. White,—do you know his initials, have you thought of his initials?

A. No, I cannot recall.

2260 X-Q. 48. Was he with the P. Lorillard Company before this Beech-Nut cigarette campaign started?

A. Yes.

X-Q. 49. About how long?

A. About seven months.

X-Q. 50. In what department?

A. Cigarettes department?

X-Q. 51. Did he work with you in that district?

A. He worked under my supervision; yes.

X-Q. 52. Is he still with the Lorillard Company?

A. I do not think so.

2261 X-Q. 53. Did both this Mr. Brown and Mr. White work with you on the Beech-Nut cigarette campaign, from start to finish on the campaign?

A. Yes.

X-Q. 54. Right through. Do you know where Mr. White is now?

A. No.

X-Q. 55. Do you know Mr. Carsten's initials?

A. No, I do not recall them.

X-Q. 56. Do you remember his first name?

A. No, I do not.

X-Q. 57. Was he with the P. Lorillard Company when the Beech-Nut cigarette campaign started?

2262 A. Yes.

X-Q. 58. About how long?

A. About two weeks.

X-Q. 59. Did you get him for the purposes of the campaign?

A. I hired him originally to work Helmars.

X-Q. 60. Did he work right through the campaign with you from start to finish?

A. Yes.

X-Q. 61. Is he still with the Lorillard Company?

A. I do not know.

X-Q. 62. You don't know where he is at all?

A. No, I do not.

X-Q. 63. Do you know Mr. Rumpf's initials or first name? 2263

A. No, I cannot recall his.

X-Q. 64. Was he with the P. Lorillard Company when this Beech-Nut cigarette campaign started?

A. Yes.

X-Q. 65. About how long had he been?

A. About two weeks before.

X-Q. 66. Did you hire him for the purposes of the campaign?

A. Put him on to work Helmars.

X-Q. 67. Did he work with you right through the Beech-Nut campaign from start to finish? 2264

A. Yes.

X-Q. 68. Is he still with the Lorillard Company?

A. That I do not know.

X-Q. 69. Do you know where he is?

A. No, I do not.

X-Q. 70. Do you know Mr. Quince's initials or first name?

A. I think it is Ed.

X-Q. 71. Was he with the P. Lorillard Company before this campaign started?

A. Yes.

X-Q. 72. About how long? 2265

A. That I do not know. He has been with the company—

X-Q. 73. Had he been with them a long time?

A. A long time; yes. In fact, he was transferred to me during the life of this Beech-Nut cigarette campaign.

X-Q. 74. What department was he transferred to you from?

A. From the plug and smoking department.

X-Q. 75. Did he start the campaign with you?

A. Yes.

X-Q. 76. Did he work right through to the finish of the campaign?

2266 A. Yes.

X-Q. 77. Is he still with the Lorillard Company?

A. I think he is.

X-Q. 78. Do you know where he is?

A. In St. Louis, I guess.

X-Q. 79. Do you know Mr. Imhoff's initials or first name?

A. No, I do not.

X-Q. 80. Was he with P. Lorillard Company before the Beech-Nut cigarette campaign started?

A. Yes.

X-Q. 81. About how long?

2267 A. Oh, I don't know. He too was transferred from the plug and smoking.

X-Q. 82. Was he an old employee?

A. Yes.

X-Q. 83. Did he start the campaign with you?

A. Yes.

X-Q. 84. And worked right through to the end with you?

A. Yes.

X-Q. 85. Is he still with the Lorillard Company?

A. That I do not know.

X-Q. 86. Do you know where he is at all?

2268 A. No, I do not.

X-Q. 87. What was the name of the seventh man?

A. I do not recall, but he was an old employee.

X-Q. 88. Did he start the campaign with you?

A. Yes.

X-Q. 89. Worked right through to the end with you?

A. No. Worked probably a week or more. He was taken sick and he resigned.

X-Q. 90. Do you know what was the matter with him?

A. No, I do not. He was transferred from the Beech-Nut scrap department.

X-Q. 91. Do you mean he resigned from this Beech-Nut cigarette campaign or from the Lorillard Company?

A. From the company.

2269

X-Q. 92. Did he join the company again, do you know?

A. Not that I know of; no.

X-Q. 93. Is he still living?

A. That I do not know.

X-Q. 94. You do not know where he is?

A. No, I do not.

X-Q. 95. Did you have any other men for this Beech-Nut cigarette campaign at all?

A. No. None other than the number I mentioned.

X-Q. 96. Did you have occasion to reprimand or find fault with the work of any of them during the Beech-Nut cigarette campaign?

2270

A. No, not generally.

X-Q. 97. Do you remember any instances where they did not follow your instructions and were reprimanded by you?

A. None other than not getting enough business, maybe on one or two occasions of them not getting enough business on the street.

X-Q. 98. During this Beech-Nut cigarette campaign did you see in your district any circulars or circular letters from the P. Lorillard Company offering additional compensation to salesmen for increasing the sales of Beech-Nut cigarettes?

2271

A. I knew that the company offered twenty-five cents a thousand for the jobber salesmen to work the brand.

X-Q. 99. Was that all during the campaign or for a particular period?

A. A particular period, I think.

X-Q. 100. Did you see any circulars on that?

A. I do not recall of seeing one; no.

X-Q. 101. Did you ever receive any special instructions from any of your superiors in the P. Lorillard Company in regard to the Beech-Nut cigarette sales, in regard to the selling of the Beech-Nut cigarettes?

A. Any special instructions?

2272 X-Q. 102. Yes.

A. No, I can't say that I have; none different than in any other campaign.

X-Q. 103. Did you receive any written instructions or circulars covering the methods to be used during this Beech-Nut cigarette campaign?

A. No, I can't say that I have.

Mr. Johnson: That is all.

Mr. Cavanagh: No redirect.

2273

By agreement of counsel for the respective parties to the above entitled cause, the signature of the witness to the foregoing deposition was waived.

Whereupon an adjournment was taken until Thursday, February 8, 1923, at 10:00 a. m.

Chicago, February 8, 1923

10:00 o'clock a. m.

Parties met pursuant to adjournment.

Present: Counsel as before.

2274

FRANK C. DEGAN, called as a witness on behalf of the defendant, P. Lorillard Company, having been first duly sworn, testified as follows:

*Direct Examination.*

By Mr. Cavanagh:

Q. 1. What is your name, age, residence and occupation?

A. Frank C. Degan, 1106 Wrightwood Avenue, Chicago; forty-five years old; salesman for the P. Lorillard Company.

Q. 2. How long have you been connected with the P. Lorillard Company? 2275

A. Seven years; 1916 was the year that I came with them.

Q. 3. And in what departments and what capacities?

A. In the plug and smoking department continuously.

Q. 4. As a salesman?

A. As a salesman.

Q. 5. Where are your headquarters at present located?

A. 414 Rush Street, Chicago.

Q. 6. And under whose supervision do you work? 2276

A. Mr. W. H. Brown.

Q. 7. Now, Mr. Degan, do you recall or were you directly connected with the introductory campaign of the Beech-Nut cigarette in the territory where you were working?

A. As a salesman; yes, sir. Distributed it, if that is what you mean; yes, sir.

Q. 8. When did you first start to distribute this Beech-Nut cigarette in an introductory campaign?

A. On the morning of September 6th or 7th. It was the morning after Labor Day in the year 1921. Labor Day was on Monday, whether it was the 6th or 7th, it was the next morning; Lockport, Indiana. We left here on the evening of Labor Day. That was a holiday; it was for us. 2277

Q. 9. Did you work under the supervision of anyone and, if so, whose supervision?

A. I would have to stop and think a minute.

Q. 10. Who was in charge of your crew?

A. I was just thinking. There was a change about that time. Mr. W. H. Brown; yes.

Q. 11. Did you take part in any such introductory campaign in Chicago?



2278 A. Yes, sir.

Q. 12. When did you start that campaign and when did it end, as far as the active campaign was concerned?

A. On September 26th, approximately, and ended the end of that year; ended December 15th or 16th, somewhere around there, when we went on our vacations for the holidays; that was the active campaign.

Q. 13. As I understand, you were a member of Mr. Brown's crew in introducing this Beech-Nut cigarette to the trade?

A. Yes, sir.

2279 Q. 14. Did Mr. Brown give you any instructions as to how to proceed with the introduction of this cigarette to the trade, and if so, please tell us, in your own words, just what those instructions were.

2280 A. Why, yes, we were instructed to explain to the dealer it was a combination of the various domestic tobaccos with a sprinkling of Turkish, and, of course, I explained to start with that we always explained to the dealer when we went in the place that we represented the Lorillard Tobacco Company and we manufactured brands such as Murad cigarette, Union Leader, Climax, Beech-Nut Scrap; that was for the purpose of identifying ourselves, as far as the dealer was concerned. Our instructions always had been to give them to understand we were from the Lorillard Company. The purpose of that was, I imagine, that the dealer would not forget us. We wanted him to remember our faces and we wanted him to know that we represented the Lorillard Tobacco Company as distinguished from a great many other companies.

Q. 15. How often did you receive such instructions from Mr. Brown, how often would they be given?

A. There were salesmen's meetings, we might call them, I should say several times a week, yes, at least that.

Q. 16. Where were you when these instructions 2281  
would be given or these salesmen's meetings held?

A. At the warehouse or depot, 414 Rush Street.

Q. 17. At what time of the day would these meetings  
usually be held?

A. Always before we left in the morning.

Q. 18. What do you mean by "left in the morning?"

A. Before we went out on our territory.

Q. 19. Now, when you went to call on the trade in in-  
troducing this Beech-Nut cigarette during this cam-  
paign, did you carry any materials with you and, if  
so, what?

A. Well, we carried stock, if that is what you want 2282  
to know. I believe we started with ten cartons of the  
cigarette and sold them for cash. We had posters also.  
Was it the yellow—yellow posters; yes; and later on a  
tin sign that we were required to carry.

Q. 20. And what did you do with these cartons of  
Beech-Nut cigarettes that you carried with you? Did  
you sell these to the customer or what?

A. We sold those for cash, the cartons that we car-  
ried with us.

Q. 21. What did you do with the advertising?

A. Pasted them on the window where we could, and  
where that was not possible got the best possible loca- 2283  
tion for them on the dealer's store front, of course.

Q. 22. Now, when you called on a customer, say a  
retailer, in introducing this Beech-Nut cigarette, what  
sales talk did you give him or what did you say to him?

A. As a rule—I will use this carton to illustrate—

Mr. Cavanagh: Witness refers to a carton of  
Beech-Nut cigarettes on the table before him.

A. A great many of the trade I was familiar with.  
I would tell them: "Harry, this is a Lorillard Beech-  
Nut cigarette. You have heard of it." They had

2284 heard of it because they were placed pretty generally throughout the territory before they came into Chicago and the better class dealers had heard of them. "It is a combination of Burley and some Virginia tobacco. It is a well wrapped piece of goods. Mild, somewhat milder than the average run of the fifteen-cent cigarettes. It will cost you \$1.12 a carton net." I always quoted the net prices where it was a cash proceeding. Otherwise it resulted in an argument on discounts. Now, there was a little yellow slip we had in all of them, I used to make it a practice to put in the end of the carton, just as this is (indicating), and set it up on the dealer's case as a rule. Now, that was the substance of what I told them, as far as the selling end of it was concerned.

Q. 23. Was that all you told them?

A. Well, there would be other— Sometimes there would be a little selling argument, Mr. Cavanagh. They might say sometimes they had no outlet for a new brand and in that case I would explain to them as far as I could that our brands were all big sellers and call their attention again to our Climax or our Union Leader and our Beech-Nut Scrap tobacco, and explained to them that there was every reason to believe that this would be just as good a seller as our other brands. That was the substance of it, practically.

2286

Q. 24. I show you some slips which are pinned together, which are in this case as defendant's exhibit No. 10. Can you identify those slips and, if so, tell me what they are?

A. I can identify those as being the Lorillard order blanks. It should have a tissue in here, or two of them. These are the original and duplicate of the Lorillard Tobacco Company order blank.

Q. 25. Did you ever use slips like these in your business?

A. Yes, sir.

228

Q. 26. What did you do with them?

A. We would use them wherever we got an order.

Q. 27. How did you use them? Just tell us.

A. If it was a cash order it was: Mark the date and "Cash" in here (indicating), the man's name, the street address and the merchandise and the character of it. Two hundred Beech-Nut cigarettes, \$1.12; down across the face of it "Paid, Degan." The dealer was given the yellow slip. That is the purpose of it, either as a receipt or memorandum of his order, either one of the two. That is what they were used for. There should be a tissue of that; that stays in the book.

228

Q. 28. Did you ever sell or are you now selling the Beech-Nut scrap tobacco to the trade? If so, tell us just about what you have done in this line.

A. I am selling it at present; yes; I have been since the beginning of 1922. What was the other question?

Q. 29. Had you sold any of the Beech-Nut scrap before this?

A. Before 1922?

Q. 30. Yes.

A. To the best of my knowledge, no. I think we got that brand at the beginning of 1922.

Q. 31. What department were you working in before 1922?

228

A. Plug and smoking. I might explain, previous to that time the Beech-Nut scrap department was a separate department of the Lorillard Company.

Q. 32. So you personally began selling the Beech-Nut Scrap in 1922?

A. Yes, sir.

Q. 33. Now, have you ever heard of any comments or remarks or inquiries from customers or others to the effect or which would lead you to believe that they thought the Beech-Nut cigarette or the Beech-Nut

2290 Scrap tobacco was made by the same people that make the Beech-Nut gum or Beech-Nut peanut butter?

A. No, sir.

Q. 34. Are you still selling the Beech-Nut cigarette?

A. Yes, sir.

Q. 35. Are you still selling the Beech-Nut Scrap tobacco in your territory?

A. Yes, sir.

Mr. Cavanagh: Direct-Examination closed.

*Cross-Examination*

2291 By Mr. Johnson:

X-Q. 36. What was your district, Mr. Degan during this Beech-Nut cigarette campaign?

A. We had no particular section. We were assigned to different streets or territories from day to day.

X-Q. 37. What was the whole district that you were engaged in working in?

A. In Chicago, you mean?

X-Q. 38. Yes. Anything outside of Chicago?

A. Lockport, Indiana; Peru; Rochester; Monon; Rensselaer.

2292 X-Q. 39. Was your territory the whole district of Indiana or some portion of Indiana?

A. We were sent to Lockport and while we were there we received a slip from Mr. Brown—I had another man with me—which gave us towns we were to make, and they were the towns I have mentioned. There were several more, if you will let me finish.

X-Q. 40. If you can remember them.

A. I think so.

X-Q. 41. The others that you can remember.

A. North Judson, Shelby, Hammond, I think that is all, to the best of my recollection.

X-Q. 42. Was that in addition to the district of Chicago? 2293

A. Yes, sir.

X-Q. 43. When you were working the district of Chicago, what portion of it was assigned to you?

A. Mostly the South and West Side.

X-Q. 44. South of any particular boundary street?

A. Madison and south.

X-Q. 45. Did you work that territory with other salesmen?

A. You mean in connection with other salesmen or in company with—

X-Q. 46. Were there other salesmen working that same territory during that Beech-Nut cigarette campaign? 2294

A. Oh, yes.

X-Q. 47. Who were they, if you can remember?

A. No, I can't answer that question. There were so many of them and the most of them were strangers to me. They were men that had been put on at the time the campaign started.

X-Q. 48. Whose crew was that?

A. At that time they were under the general head of a Mr. Sherrock. I may be wrong about that, but that is the best of my recollection; and I worked under Mr. Brown. I think there were half a dozen others that were under Mr. Brown's direct jurisdiction in this work, and a Mr. Sherrock had charge of the Beech-Nut cigarette as a whole, but the plug and smoking department took the active part in it, in view of the fact that it was a Lorrillard brand and they wanted to get as rapid and thorough a distribution as possible. 2295

X-Q. 49. Was this Mr. Sherrock in charge of the Beech-Nut cigarette campaign for the City of Chicago?

A. I do not hesitate because I know—I can only explain that event this way: Presumably that after the

2296 campaign was over the Beech-Nut cigarettes were entirely under Mr. Sherrock's jurisdiction. We were then the plug and smoking department, but Mr. Sherrock was considered the head of the Beech-Nuts, as I understand.

X-Q. 50. Did he have a crew during this period of September 26th to the end of 1921 working on the South Side in the City of Chicago, at the same time you were working that part of the city?

The witness: Read that question.  
(The question was read)

2297 X-Q. 51. That was during the Beech-Nut cigarette campaign in Chicago?

A. Yes, they were over the city in general. I can't say they were on the South-Side any more than the North Side, Mr. Johnson. We had no side, if I remember rightly, no side district. Now, his men may have had. Mr. Brown's did not, to the best of my knowledge. I may be wrong. This was a year and a half ago.

X-Q. 52. Mr. Sherrock had a crew of men out simply at the same time, did he?

A. Yes, sir.

2298 X-Q. 53. You say these men were not old Lorillard employees?

A. My recollection is that the majority of them were not old Lorillard employees.

X-Q. 54. Were they men hired just for the occasion?

A. That is to the best of my recollection.

X-Q. 55. Can you remember the names of any of that crew of men of Mr. Sherrock's?

A. Well, we have in the smoking and plug department two of them at present.

X-Q. 56. Who are they?

A. A. Winkelman.

X-Q. 57. How do you spell that?

2299

A. W-i-n-k-e-l-m-a-n.

That answer is wrong. I should have said one. We had another one, but he was transferred to Denver.

X-Q. 58. Do you know whether Mr. A. Winkelman was employed by the Lorillard Company for the first time for this Beech-Nut cigarette campaign?

A. To the best of my knowledge, that was the first time he worked for Lorillard.

X-Q. 59. What is the name of the man who went to Denver?

A. Arthur Mayburn. M-a-y-b-u-r-n, I think that is.

X-Q. 60. Do you know whether he was hired for the first time by the Lorillard Company to engage in this Beech-Nut cigarette campaign?

2300

A. That is my recollection.

X-Q. 61. Have you ever heard any discussion at all, or any questions asked as to who made the Beech-Nut cigarette?

A. You mean the dealer?

X-Q. 62. Anybody.

A. That question is rather broad, Mr. Johnson. I wouldn't know just how to answer that. I would have to answer it in blanket no.

X-Q. 63. Anybody on your rounds as you have gone about the City of Chicago or your Indiana district?

2301

A. Oh, I heard once or twice, not over that, I don't think, they would ask or make the comment: "This is not made by the people that make the gum, is it?" I have had that occur to me once or twice. They seemed to take it for granted that it was not.

X-Q. 64. Can you describe where or when such incidents as that occurred?

A. No, I cannot. I attached no importance to them, at the time at all; none whatever. I had made a practice of giving the dealer to understand that I was from the Lorillard, the Climax and the Beech-Nut Scrap house.



2302 That was, as much as anything, because I wanted him to remember me. I wanted him to remember me.

X-Q. 65. You have heard a few instances of that kind of questions and discussions, have you?

A. No discussion. It was just a casual remark: "This is not made by the gum house." I have heard that once or twice; I do not know where or when.

X-Q. 66. Did you make any effort to remember such incidents, if they occurred?

A. No, sir.

X-Q. 67. Did anyone ever ask you to make a note of them or remember them?

2303 A. No, sir.

X-Q. 68. When you say there were only one or two such remarks that you heard, you mean you do not remember any more than that, do you not?

A. Certainly. Certainly. It seems to me if there were more I might have had in mind where they occurred. That is why I say one or two.

X-Q. 69. Were you under Mr. Wade H. Brown during this Beech-Nut cigarette campaign?

A. Yes, sir.

2304 X-Q. 70. [Did you ever receive any written instructions from Mr. Brown covering your work in connection with this campaign,—any written instructions?

A. Not that I remember.

X-Q. 71. In offering these Beech-Nut cigarettes for sale, did you emphasize the quality of the cigarette?

A. Not more than I would any other one of our brands, I don't think. I made it a practice to speak quality in practically everything that Lorillard manufactured. I have, I think, good reason to believe that is a good selling argument with us and we use it. The fact that our brands are sellers as they are would indicate that quality has something to do with it.

X-Q. 72. Have you heard any complaints or remarks from people who have used the cigarette as to the quality of the Beech-Nut cigarette? 2305

A. Yes, I have.

X-Q. 73. Of what nature?

A. They varied. Occasionally I would find a man that said they were too strong. Another man said they were too mild.

X-Q. 74. How did they sell at first?

A. You mean the outlet?

X-Q. 75. In your experience, how did they sell after the campaign opened?

A. Well, it was an intensive campaign and they sold, I think, as good as could be expected. I can't answer your question any further than that. 2306

X-Q. 76. Did you make comparatively large sales?

A. No, I did not. I did not make any comparatively large sales personally.

X-Q. 77. Would you say they sold pretty well at the start?

A. For a new cigarette; yes.

X-Q. 78. Did the sales increase as the weeks and months went by?

A. I had no figures.

X-Q. 79. This is your own experience?

A. They held about even, I should judge, I imagine they did, while we continued our advertising. 2307

X-Q. 80. How are they selling to-day?

A. They are not selling as well, due to the lack of advertising, I think. We are doing no work in an advertising way.

Mr. Johnson: That is all.

2308

*Re-direct Examination.*

By Mr. Cavanagh:

R-D. Q. 81. If you had heard any appreciable or frequent number of remarks as to whether or not the Beech-Nut cigarette was made by the same people as the Beech-Nut gum, you would have remembered the fact?

A. Oh, yes.

R-D. Q. 82. As I understand it, when you started the Beech-Nut campaign, you started it about September 6, 1921, in Indiana, did you not?

2309

A. Yes, sir.

R-D. Q. 83. And then you subsequently came to Chicago about September 26, 1921?

A. Yes, sir.

R-D. Q. 84. And you were loaned from the plug and smoking department for this campaign, were you?

A. Yes, sir.

R-D. Q. 85. Now, you have stated in your direct examination that you received word from Mr. Brown as to what cities to cover in Indiana. Were those written instructions, do you recall?

2310

A. Mr. Brown came to the hotel in Lockport and we wrote down, he and I—who don't know, which of us,—the names of those cities that Mr. Brown wanted me and the other salesmen there to make.

Mr. Cavanagh: That is all.

Mr. Johnson: That is all.

By agreement of counsel for the respective parties to the above entitled cause, the signature of the witness to the foregoing deposition was waived.

2311

PHILIP LUDWIG BURGESON, called as a witness on behalf of the defendant, P. Lorillard Company, having been first duly sworn, testified as follows:

*Direct Examination.*

By Mr. Cavanagh:

Q. 1. Please state your name, age, residence and occupation?

A. Philip Ludwig Burgeson; I am twenty-nine; 3802 North Paulina Street, Chicago; salesman for the P. Lorillard Company.

2312

Q. 2. How long have you been connected with the P. Lorillard Company?

A. It will be three years April 17, 1923; that is, since April, 1920.

Q. 3. What department of the Lorillard Company did you start with and where?

A. I started in the plug and smoking, with Mr. Edward Meyer.

Q. 4. Where?

A. At Kinzie Street; the office was at that time on Kinzie Street, Chicago.

Q. 5. Did you take part in any introductory campaign of the Beech-Nut cigarette in the Chicago territory?

2313

A. Yes; both in Chicago and Indiana.

Q. 6. When?

A. We started in October—or September 6th.

Q. 7. What year?

A. That is 1921. We started in Indiana. I started it in South Bend, Indiana.

Q. 8. How long did you work in India on that campaign?

2314 A. About four weeks in Indiana, three or four weeks.

Q. 9. And when and how long did you work it in Chicago?

A. Oh, we worked it in Chicago from the 26th of the same month, we worked it until Christmas time of the same year, for introductory work is what I mean.

Q. 10. Under whose supervision did you work?

A. Under W. H. Brown.

Q. 11. Now, in connection with this campaign I understand you worked as a member of Mr. Brown's crew?

2315 A. Yes, sir.

Q. 12. Did you receive any instructions from Mr. Brown as to how to do your work in this campaign or present the Beech-Nut cigarettes to the trade?

A. Yes, sir, we did receive instructions about two or three times a week how to sell and advertise the brand.

Q. 13. Where were these instructions given to you?

A. Given right at the office, 414 Rush Street.

Q. 14. What time during the day?

A. Well, from eight o'clock until—between eight and nine in the morning, just before we went out on our territories.

2316 Q. 15. What instructions did you so receive from Mr. Brown? State in your own words.

A. Well, we received instructions—we received our advertising and our cigarettes and then also how to sell and advertise the brand.

Q. 16. What did he tell you in respect to selling and advertising the brand?

A. Well, for instance: "We are with the Lorillard Company," as Mr. Brown always would state to us the Lorillard Company. "We are putting on a new cigarette called Beech-Nut. Perhaps a lot of dealers have

heard of it, of course." Then, of course, if we did not 2317  
sell the dealer we would put up our advertising and  
also mention our other brands such as Murads, Hel-  
mars, Deities; also Climax. Then we would never for-  
get to mention our famous brand, Beech-Nut chewing  
tobacco.

Q. 17. You refer to the Beech-Nut Scrap?

A. Yes, Beech-Nut chewing. We do not call it scrap  
any more, Mr. Cavanagh; we call it chewing.

Q. 18. Now, when you called on the dealer to intro-  
duce the cigarette, after receiving these instructions,  
what selling talk did you give the dealer, what did you  
say to him and what did you do? 2318

A. Well, I would come in and say I represented  
the Lorillard Tobacco Company; that we were putting  
on a new brand of cigarettes and he perhaps had  
heard of them; that they were called the Beech-Nut  
cigarettes. Then we would talk about some of our  
other brands I would say, "I suppose you know we  
also manufacture the Beech-Nut Scrap tobacco and the  
Climax, and so forth." Ask him how our other brands  
were going; also state that they were also made by the  
P. Lorillard Company, all these brands.

Q. 19. What did you do with the advertising that  
you took into the store? 2319

A. The advertising, we would try to get some in-  
side and some outside, wherever there was a space for  
it, we would ask the dealer's permission in order to put  
it up. Always that is our biggest point, advertising;  
we have got to get advertising.

Q. 20. When you went into this dealer's place you  
took some of the cartons of cigarettes with you, as I  
understand?

A. Yes, sir, I sold off a car so I always carried a  
big supply on the car with me; I always did.

Q. 21. If the dealer made a purchase, what did you  
do, what procedure would you follow?

2320 A. We would have an order blank just like that (indicating).

Mr. Cavanagh: Witness refers to Defendant's Exhibit No. 10, order receipt.

A. We would make out the order to the amount sold and then we would give him the yellow sheet and keep the white one ourselves, and if it was sent through the jobber,—sometimes the dealer did not want it direct,—we would give him the same one, the yellow one, and send the white one to the jobber and keep our own record on the tissue sheet.

2321

Q. 22. Have you ever personally sold the Beech-Nut Scrap tobacco for P. Lorillard Company to the trade?

A. I have in the last year, from the first—the year before 1922—from the first of the year, when the Beech-Nut was transferred over to the plug and smoking. Before that time it was a separate department.

Q. 23. Now, have you ever heard of any questions or comments or remarks from customers or any other person or persons to the effect or which would lead you to believe that they thought the Beech-Nut cigarettes or the Beech-Nut Scrap tobacco were made by the same people that make the Beech-Nut gum or Beech-Nut peanut butter or food products?

2322

A. Well, I have perhaps as high as two or three times. A dealer would say, "Do you also make the Beech-Nut gum?" Of course, it would not be our big dealer that would say that; it would be some of the peanut stands, as we would say, that would say that. Two or three times at the highest.

Q. 24. What was your answer on those occasions?

A. "We only make smoking articles." Always say Beech-Nut gum is a food product and we do not make food products. We make eighty-five of the Turkish

brands that are on the market. We do not manu- 2323  
facture any food products whatsoever.

*Cross Examination.*

By Mr. Johnson:

X-Q. 25. You did, then, Mr. Burgeson, hear some questions and discussion as to whether the Beech-Nut cigarettes were made by the gum people?

A. Yes, naturally I would, on account of being the same name, but not as much as we did expect.

X-Q. 26. Can you describe any of those incidents?

A. No, I can't; I can't remember. 2324

X-Q. 27. Can you say where they took place?

A. No, I cannot remember that. That is impossible. We paid no attention to it. I do not remember.

X-Q. 28. You did not try to remember such incidents as they happened, you did not try to remember them?

A. No, I did not.

X-Q. 29. Did anyone ever ask you to remember them or make a note of them?

A. No; not to make a note of them.

X-Q. 30. You had no reason then to try to remember them? 2325

A. No, I did not.

X-Q. 31. When you say there were only two or three such instances then, do you mean that there were only two or three that you remember?

A. Well, I wouldn't say that no. It may not be that many, but I remember of hearing some. I couldn't exactly say whether it was two or three, one or two.

X-Q. 32. During the Beech-Nut cigarette campaign, did you go around any of the time with another salesman?

A. At the time I took part of Indiana and another man took the other part of Indiana, a few counties. I



2326 had one man with me, but never with me on the same car. He was never with me. I told him where to go. I had South Bend and a few other towns.

X-Q. 33. That is what I mean, you did not go into the same stores?

A. No. That is just what I am trying to explain.

X-Q. 34. Then when you said on your direct testimony, "We would do this and we would do that," you mean you, yourself?

A. Me, myself, of course. I did not mean—When we talk about our company we say "we," of course. We do not say "I."

2327 X-Q. 35. But you cannot say, can you, what the other salesmen said and did when they went into the stores?

A. No, I cannot. Everyone uses a different line of sales talk, of course. We are all instructed the same, but finally drift into our own.

X-Q. 36. Can you give the names of the Indiana towns that you worked during the Beech-Nut cigarette campaign?

A. Give the names of what?

X-Q. 37. Of the towns?

2328 A. No, I can't. I remember I worked South Bend and Benton Harbor, but there was a lot of small towns, maybe only two or three dealers in. I have got the records of it, if you want it, but I can't remember.

X-Q. 38. Can you remember any more than that?

A. It is hard to remember those little burgs, you know, as we call them. We put it all on record when I have seen the dealer and I have forgotten all about them towns and everything. I am through with them.

X-Q. 39. When you were working the Chicago district, what part of Chicago did you yourself work in?

A. Both the North Side—

X-Q. 40. I am speaking of the Beech-Nut cigarette campaign.

A. Both the North Side and the South Side. We 2329  
worked streets, of course, take street after street, and  
we are assigned to a different street every morning.

X-Q. 41. Did you work mostly the South Side or  
mostly the North Side?

A. That I could not say; just about the same, I think.

X-Q. 42. Were there any other crews out besides this  
crew of yours under Mr. Brown?

A. Why, that was only at the time we were out in  
Indiana that we were split up in small crews. Otherwise  
we would work directly under Mr. Brown.

X-Q. 43. But I mean besides Mr. Brown's crew, do  
you know of any other crews who worked the City of 2330  
Chicago during this Beech-Nut cigarette campaign?

A. No, only Mr. Brown's crew worked here at that  
time.

X-Q. 44. In offering these Beech-Nut cigarettes to the  
trade, did you emphasize the quality of the cigarettes?

A. Yes. Told them it was a very mild cigarette and  
it was cheaper than the other cigarettes and giving them  
just as good quality as the others we sold at higher  
prices.

X-Q. 45. Did you hear any complaints as to the qual-  
ity of the Beech-Nut cigarettes?

A. Yes, we did. We always heard it was too mild, 2331  
didn't suit the people; too mild. That is the complaint  
we heard all the way around; that is why we never made  
a success of Beech-Nut cigarettes.

X-Q. 46. Did they sell pretty well at first, in your ex-  
perience?

A. Yes, at first they sold fairly well.

X-Q. 47. About how long did they continue to be a  
good seller?

A. Well, that is hard to say; perhaps about two or  
three months they were good sellers.

2332 X-Q. 48. How are they selling now?

A. Not very good.

Mr. Johnson: That is all.

*Re-direct Examination.*

By Mr. Cavanagh:

2333 R-D. Q. 49. If you had heard any appreciable number of frequent inquiries as to whether the Beech-Nut cigarettes were made by the same people that make the Beech-Nut gum, would you have remembered such instances?

A. I would not have remembered where it was, Mr. Cavanagh.

R-D. Q. 50. Would you remember the fact?

A. Yes, I would.

R-D. Q. 51. You said on your cross examination that Mr. Brown had the one crew here in Chicago; is that right?

A. That is at the time when we put on the cigarettes, but later on Mr. Gay was transferred over here. That was in 1922.

2334 R-D. Q. 52. Was there a Mr. Sherrock here?

A. I did not work under Mr. Sherrock.

Pardon me. I made a slip there. Mr. Sherrock was here too.

R-D. Q. 53. For information, what is Mr. Sherrock's position here, what is he?

A. He is not here any more.

R-D. Q. 54. What was he at that time?

A. He was head salesman for the Beech-Nut cigarettes. Of course, we were in the plug and smoking and also assigned to work Beech-Nut cigarettes at the time when Beech-Nut cigarettes were put out and everybody

was put on them in the plug and smoking, out of the plug 2335  
and smoking, were put on this Beech-Nut crew.

*Re-cross Examination.*

By Mr. Johnson:

R-X. Q. 55. Then do I understand you now to say that during the Beech-Nut cigarette campaign in Chicago there was another crew or other crews working the C of Chicago?

A. Yes, there was a Beech-Nut crew that had nothing to do but with Beech-Nut cigarettes.

R-X. Q. 56. Do you know how many of such other crews there were? 2336

A. There was only one crew here that was charged under Mr. Sherrock.

R-X. Q. 57. Did you know the men on that crew?

A. No; none of those men are left.

R-X. Q. 58. Could you name any of them?

A. Well, there was— No, I couldn't. I was never in contact with them, because we had our department and did not pay any attention to them at all.

R-X. Q. 59. Were they old Lorillard employees, do you know? 2337

A. No, they were not. They were hired just for the present time, I guess, for the campaign.

Mr. Johnson: That is all.

Mr. Cavanagh: That is all.

By agreement of counsel for the respective parties to the above entitled cause, the signature of the witness to the foregoing deposition was waived.

WHEREUPON a recess was taken until 2:00 o'clock p. m. of the same day.